Supreme Court, U.S.
FILED

No. 10-673

NOV 18 2010

OFFICE OF THE CLERK

In The

Supreme Court of the United States

CURTIS A. DUKES,

Petitioner,

v.

LANCER INSURANCE CO.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

CURTIS A. DUKES
1253 Springfield Ave.
Suite 301
New Providence, NJ 07974
973-590-7423

QUESTIONS PRESENTED

1. DID THE RESPONDENT VIOLATE A FEDERAL LAW APPROVING A CONVICTED SEX OFFENDER'S INSURANCE POLICY FOR SCHOOL CONTRACTS, WHILE DENYING PETITIONER'S INSURANCE POLICY.

2. DOES THE FOURTEENTH AMENDMENT CONSTITUTIONAL LAW PROTECT AN INDEPENDENT CONTRACTOR'S FEDERAL CLAIM FOR VIOLATION OF TITLE 42 U.S.C. § 1981 AND TITLE 42 U.S.C. § 1983, INTENTIONAL RACE DISCRIMINATION.

3. DID THE COURT OF APPEALS DENY PETITIONER'S FOURTEENTH AMENDMENT EQUAL PROTECTION OF THE LAW DISMISSING PETITIONER'S CURRENT ONGOING VIOLATION OF PETITIONER'S CIVIL RIGHTS, TITLE 42 U.S.C. § 1981 AND TITLE 42 U.S.C. § 1983 CLAIM.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

OPINIONS BELOW 1

JURISDICTIONAL STATEMENT 1

CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES AT ISSUE 3

STATEMENT OF THE CASE 6

REASONS WHY CERTIORARI SHOULD BE GRANTED 9

APPENDIX

Opinion, United States Court of Appeals for the Third Circuit, Aug. 2, 2010 ..... App. 1

Order, United States District Court of New Jersey, Dec. 4, 2009 ..... App. 12

Opinion, United States District Court of New Jersey, Sept. 24, 2009 ..... App. 18

Denial of Rehearing, United States Court of Appeals for the Third Circuit, Aug. 20, 2010 ..... App. 35

Judgment of Conviction ..... App. 37

Certificate of Insurance, Jan. 14, 2009 ..... App. 45

FMCSA Motor Carrier Information ..... App. 48

Letter, Oct. 5, 2009 ..... App. 50

Certificate of Insurance, Mar. 28, 2005 ..... App. 52

Letter, Dec. 19, 2005 ..... App. 55

Email, Sept. 27, 2005 ..... App. 57

TABLE OF CONTENTS – Continued

Page

Letter, Mar. 14, 2008 ..... App. 58

Letter, Sep. 7, 2005 ..... App. 60

Letter, Oct. 25, 2005 ..... App. 62

TABLE OF AUTHORITIES

Page

CASES

Bateman v. United States Postal Service, 231 F.3d 1220 (9th Cir. 2000) 28

Briones v. Riviera Hotel Casino, Case # 96-15076, 116 F.3d 379 (1997) 24, 28

Brown v. J. Kaz, Inc., 581 F.3d 175 (3d Cir. 2009) 11, 12, 17

Bulloch v. United States, 763 F.2d 1115 (10th Cir. 1985) 18

Com. By Packel v. Tolleson, 321 A.2d 664 (Pa. Cmwlth. 1974) 19

Cone v. Harris, 230 P. 721 (Okl. 1924) 19

Danco, Inc. v. Wal-Mart Stores, Inc., 178 F.3d 8 (1st Cir. 1999) 13

Galibois v. Fisher, 2006 WL 827326 (1st Cir. 2006) 20

Great Costal Express v. International Brotherhood of Teamsters, 675 F.2d 1349 (4th Cir. 1982) 29

Jackson v. Rohm & Haas Co., 2005 WL 1592910 (E.D. Pa. 2005) 20

Kenner v. C.I.R., 387 F.3d 689 (1968) 24

King v. Atiyeh, 814 F.2d 565 (9th Cir. 1987) 24

Kougasian v. Tmsl, 359 F.3d 1136 (2003) 23

TABLE OF AUTHORITIES – Continued

Page

Lane v. Halliburton, 529 F.3d 548, 27 I.E.R. Cas. (BNA) 1254, R.I.C.O. Bus. Disp. Guide (CCH) ¶ 11491 (5th Cir. 2008) 23

Livingston v. H.I. Family Suites, Inc., 2006 WL 1406587 (M.D. Fla. 2006) 23

MacDonald v. MacDonald, 407 Mass. 196 (1990).....29

Murray v. Buell, 74 Wis. 14 (Wis. 1889).....27

Nudd v. Burrows, 91 U.S. 426, 23 L.Ed. 286 (1875).....19

Pegram v. Honeywell, Inc., 361 F.3d 272 (5th Cir. 2004).....16

Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993).....26, 28

Pumphrey v. K.W. Thompson Tool Co., 62 F.3d 1128 (9th Cir. 1995).....29

Sharon v. Sharon, 75 Cal. 1 (Cal. 1888).....27

Swimmer v. IRS, 811 F.2d 1343 (9th Cir. 1987).....24

Taylor v. ADS, Inc., 327 F.3d 579 (7th Cir. 2003).....13

United States v. Bayes, 210 F.3d 64 (1st Cir. 2000).....10

Valley *v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 41 S.Ct. 116 (1920).....19

Washington v. Wilmore, 407 F.3d 274 (4th Cir. 2005).....20

TABLE OF AUTHORITIES – Continued

Page

Webster v. Fulton County, 283 F.3d 1254 (11th Cir. 2002) 13

Windsor v. McVeigh, 93 U.S. 276, 23 L.Ed. 914 (1876) 19

CONSTITUTIONAL PROVISIONS

First Amendment to the United States Constitution 3, 17, 20

Fourteenth Amendment to the United States Constitution ..... *passim*

United States Constitution Article III 3, 13, 30

STATUTES

18 U.S.C. § 4 ..... 5, 23 25

18 U.S.C. § 1505 25

28 U.S.C. § 1254(1) 3

28 U.S.C. § 1291 2

28 U.S.C. § 1331 ..... 2, 12

42 U.S.C. § 1981 ..... *passim*

42 U.S.C. § 1983 ..... *passim*

N.J.A.C. § 6A: 27 6

N.J.A.C. § 6A: 27-12.1 ..... 7, 15, 21

N.J.S.A. § 2C: 33-4 ..... 6, 10

N.J.S.A. § 18-A 21

TABLE OF AUTHORITIES – Continued

Page

RULES AND REGULATIONS

Appellant Rule Civil Procedure Rule 40 ..... 3, 27

Bankruptcy Rule 9006(b) 27

Federal Rule Civil Procedure Rule 60(a)(b) 2

Rule 27 25

Title 49 C.F.R., Chapter 3 Subpart B
§ 390.5 ..... 5, 7, 12, 21

Title 49 C.F.R., Transportation Subpart B
§ 390.35(b)(c) 22

Title 49 C.F.R., Transportation Subpart B
§ 390.37 22

OTHER AUTHORITIES

Gene R. Shreve & Peter Raven-Hansen, Understanding Civil Procedure 107 (3d ed. 2002) 13

Suspension of Law Practice, Dated July 1, 2003 Effective August 1, 2003 for the period of one year 21

7 Moore's Federal Practice, 2d ed., p. 512 24

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Third Circuit, dated Aug. 2, 2010, *Curtis A. Dukes v. Lancer Insurance Co.*, No. 10-1022, is reproduced at Appendix 1.

The Order of the United States District Court of New Jersey, dated Dec. 4, 2009, *Curtis A. Dukes v. Lancer Insurance Co.*, No. 08-4948, is reproduced at Appendix 12.

The Opinion of the United States District Court of New Jersey, dated Sept. 24, 2009, *Curtis A. Dukes v. Lancer Insurance Co.*, No. 08-4948, is reproduced at Appendix 18.

The Order of the United States Court of Appeals for the Third Circuit, dated Aug. 20, 2010, *Curtis A. Dukes v. Lancer Insurance Co.*, No. 10-1022, is reproduced at Appendix 35.

JURISDICTIONAL STATEMENT

On October 6, 2008, Petitioner filed a complaint and amended complaint on November 11, 2008 against Respondent in the United States District Court, District of New Jersey, alleging the Respondent violated the United States Constitution Law, (Rights Guaranteed Privileges, Property and Due Process) Section One of the Fourteenth Amendment, and Title 42 U.S.C. § 1981(a) Statement of equal rights, (b) Make and enforce contracts and, Title 42

U.S.C. § 1983 Civil action for deprivation of rights, by preventing Petitioner to enter into any contracts while at the same time accepting Petitioner, on a Similarly Situated Caucasian Owned Charter Bus Co. insurance policy, this jurisdiction is invoked under Title 28 U.S.C. § 1331.

On September 24, 2009, the Honorable Judge Joseph A. Greenaway, Jr. for the United States District Court, District of New Jersey, filed an opinion, dismissed Petitioner's Independently filed suit against Respondent for violating Fourteenth Amendment Federal Law and Petitioner's Civil Rights Under Title 42 U.S.C. § 1981 and Title 42 U.S.C. § 1983 pursuant to the *Rooker-Feldman* Doctrine.

On October 7, 2009, Petitioner filed a Motion pursuant to Federal Rule Civil Procedure, Rule 60(a)(b).

On December 4, 2009, the Honorable Judge Joseph A. Greenaway, Jr. for the United States District Court, District of New Jersey, filed an Order denying Petitioner's motion pursuant to Federal Rule Civil Procedure, Rule 60(a)(b).

On December 23, 2009, Petitioner appealed the dismissal of his complaint to the United States Court of Appeals for the Third Circuit. Jurisdiction of this Court, the United States Court of Appeals for the Third Circuit, is invoked under Title 28 U.S.C. § 1291.

On August 2, 2010 the Third Circuit Court of Appeals issued an opinion modifying and affirming

the District Court of New Jersey Orders dated September 24, 2009 and December 4, 2009.

On August 18, 2010, Petitioner filed a petition pursuant to Appellant Rule Civil Procedure Rule 40 Petition to Rehear.

On August 20, 2010, the Third Circuit Court of Appeals issued an Order denying Petitioner's petition for rehearing.

The Jurisdiction of this Court to review the Judgment of the Third Circuit Court of Appeals is invoked under Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES AT ISSUE

First Amendment to the United States Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment to the United States Constitution

The Right Guaranteed Privileges and Property, Due Process, Equal Protection Clause of Section 1 of the Fourteenth Amendment provides that no state

shall "deny any person privileges, property, due process, equal protection of the law within its jurisdiction."

United States Constitution Article III:

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;

Title 42 U.S.C. § 1981 states:

(a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens.

(b) "Make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

Title 42 U.S.C. § 1983 states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,

shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Title 18 U.S.C. § 4:

Misprision of felony. Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both . . .

Title 49 C.F.R., Chapter 3 Subpart B § 390.5 states:

(a) Charter transportation of passengers means transportation, using a bus, of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin.

(b) School bus means a passenger motor vehicle which is designed or used to carry more than 10 passengers in addition to the driver, and which the Secretary determines is likely to be significantly used for the purpose of transporting preprimary, primary, or secondary school students to such schools from home or from such schools to home.

School bus operation means the use of a school bus to transport only school children

and/or school personnel from home to school and from school to home.

N.J.A.C. § 6A: 27 Student Transportation.

N.J.S.A. § 2C: 33-4 Harassment:

Except as provided in subsections d. and e., a person commits a petty disorderly persons offense if, with purpose to harass another, he:

(b) Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so.

STATEMENT OF THE CASE

Facts Giving Rise To This Case

Respondent Lancer Insurance Co. conducts a Pre-employment investigation on all potential drivers, before approving that driver on their policy as a driver with any Insured Bus Company that they provide insurance coverage to, each year Respondent runs a Division of Motor Vehicle Search ("Abstract") on all approved drivers for updated information on that drivers driving history in the last 12 months for the purpose of any changes in the drivers conduct "hazardous or high risk bad drivers."

Petitioner Curtis A. Dukes is employed with Passaic Valley Coaches of Chatham, NJ, as a full time motor coach bus driver and has been since 1996, Respondent provides commercial bus insurance to Passaic Valley Coaches of Chatham, NJ, and has been

approving and accepting Petitioner each year on Passaic Valley Coach insurance policy that has Board of Education Certificates of insurance and, currently Petitioner is covered by Respondent as of filing this petition for writ of certiorari. *See* App.62.

Petitioner started his own charter bus company under the Federal Regulations of Title 49 C.F.R., Chapter 3 Subpart B § 390.5(a), Charter Transportation, and issued a Operating Authority number MC-373125-C in December of 1999, began operations in the year of 2000 in the state of New Jersey. The number of listed drivers was Curtis A. Dukes and Richard Mack, Petitioner at this time is still holding a full time drivers position with Passaic Valley Coaches of Chatham, NJ.

March 27, 2003 Respondent issued a commercial insurance policy to Petitioner's Company, Dukes Coach Lines, Inc. policy number # 158489, at the legal amount five million dollar coverage by federal law, to obtain Dukes Coach Lines, Inc. operating authority. *See* App.3b in the Court of Appeals.

In December 31, 2003, the Board of Education for the State of New Jersey disqualified Petitioner ("Curtis A. Dukes") from driving any commercial vehicle used for school functions registered as S-1 or S-2 vehicles New Jersey Code 17 or 18 school bus regulations and N.J.A.C. § 6A: 27-12.1.

Respondent in February of 2004, investigated Petitioner's Company ("Dukes Coach Lines") with Petitioner ("Curtis A. Dukes") as a driver, approved

and renewed on March 28, 2004 the 2004-2005 issued commercial policy along with Richard Mack and Richard Rivers the two other approved drivers on policy # 158489 with not one Board of Education Certificate of insurance issued to Petitioner's company.

Respondent in May of 2004 investigated and renewed Petitioner's place of employment ("Passaic Valley Coaches") with Petitioner ("Curtis A. Dukes") as a driver on the 2004-2005 issued commercial policy # BA-155099.

Respondent in January of 2005, investigated Petitioner's Company ("Dukes Coach Lines") with Petitioner ("Curtis A. Dukes") as a driver, approved and renewed on March 28, 2005 the 2005-2006 issued commercial policy along with Richard Mack and Richard Rivers the two other approved drivers on policy # 158489 with one Board of Education Certificate of insurance issued: Hunterdon County Education Service, specifically states Adults Education, to Petitioner's company. *See* App.54; *also see* App.4 in the Court of Appeals.

Respondent in September 27, of 2005 issued a notice of cancellation dated November 4, 2005 to Petitioner's company for materially increase of hazard more specifically, the insured's ("Curtis A. Dukes") motor vehicle records states he has been disqualified by the Department of Education and has been restricted from transporting school age passengers. *See* App.57.

Respondent, in May of 2006, investigated and renewed Petitioner's place of employment ("Passaic

Valley Coaches") with Petitioner ("Curtis A. Dukes") as a driver on the 2006-2007 issued commercial policy # BA-155099 with Board of Education Certificates of insurance, and Respondent has been accepting Petitioner and currently has Petitioner ("Curtis A. Dukes") covered as a full time driver on Respondent's insurance policy, Petitioner ("Curtis A. Dukes") has the same restriction on his drivers license as of filing this writ of certiorari. *See* App.62-63.

Petitioner Curtis A. Dukes rejects the unfavorable denial of the Constitutional Law, denying Petitioner's Independent Claim of the Respondent violation of Title 42 U.S.C. §1981 and 1983, claim filed for intentional race discrimination and conflict of the law, Respondent approving a convicted sex offender to transport school age kids.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I.

Review Is Warranted For The Purpose Of National Importance Respondent Lancer Insurance Co. Approves A Convicted Sex Offender To Deal With School Age Kids

On January 14, 2009, Respondent issued a commercial insurance policy, policy # BA162437 to Long Valley Coach of New Jersey, a Charter Bus Company. *See* App.49. Owner Brian Bartiromo pled guilty on June 25, 2007 to two of the four counts of

Offensive Touching, N.J.S.A. § 2C: 33-4B. *See* App.37-44. The cases determining the scope of § 113(a)(5) are consistent with Blackstone's description of battery. Even a seemingly slight, but intentional, offensive touching can suffice for a battery. For example, the First Circuit affirmed a defendant's conviction under § 113(a)(5) under the battery theory for intentionally touching a flight attendant on the buttocks. *United States v. Bayes,* 210 F.3d 64, 69 (1st Cir. 2000). On appeal, the defendant argued that the government failed to prove that he intended to injure the victim by touching her buttocks. *Id.* at 67. The court disagreed, holding that intent to injure the victim was not required, but rather, "in a prosecution for simple assault under § 113(a)(5), it is sufficient to show that the defendant deliberately touched another in a patently offensive manner without justification or excuse." *Id.* at 69. The court reasoned that at common law, battery did not require the intent to injure, but only that the offensive touching was willful. *Id.* at 68-69. Because the touching was intentional and patently offensive, the court upheld the conviction. *Id.* at 69. Respondent Lancer Insurance Co. conducts a investigation on all potential bus companies, before approving that company for an insurance policy and on all drivers with any Insured Bus Company that they provide insurance coverage to, each year Respondent runs a Division of Motor Vehicle Search ("Abstract") on all approved drivers for updated information on that drivers driving history in the last 12 months, for the purpose of any changes in the driver's conduct "hazardous or high risk bad drivers." Respondent

approves and issued a certificate of insurance to the Board of Education in the State of New Jersey on behalf of Long Valley Coach (Brian Bartiromo) to provide transporting to school age children. *See* App.37-44. This is a conflict with the Federal Law, how can Respondent Lancer Insurance Co. be permitted to conduct business under federal law and permit repeat sex offender to deal with school age kids.

II.

Review Is Warranted Because The Panel Of Third Circuit Court Of Appeals Conflict Within Its Own Circuit And The Eleventh Circuit Also The Seventh Circuit Court Of Appeals For Independent Contractors Fourteenth Amendment Rights

In the opinion filed on August 2, 2010, by the Third Circuit Court of Appeals conflicts with, the Panel decision previous litigated, conflicts within its own Circuit,[1] The Third Circuit Court of Appeals argued on July 8, 2009, and filed on September 11, 2009 in *Brown v. J. Kaz, Inc.*, 581 F.3d 175 (3d Cir. 2009), that an independent contractor has standing to pursue race discrimination claims under 42 U.S.C. § 1981. In reaching its conclusion, the court focused

---

[1] The Panel states the following conflicting statement, We have considered the various arguments raised in Dukes' briefing and conclude that they lack merit. Additionally, given our resolution of this case, we need not address whether Dukes himself is the proper plaintiff in this case.

on the text of Section 1981, which provides that all persons, shall have the same right, to make and enforce contracts, as is enjoyed by white citizens, *see* App.60-61. As stated in letter dated November 7, 2005, from insurance Agent Robert B. Chernin directed to Petitioner:

> " . . . This will confirm our conversations over the past few weeks. We have been unsuccessful in obtaining insurance quotes for you in NJ. There are a limited number of markets and all have declined to quote based on Lancer's cancellation notice . . . "

Given that Section 1981 refers to all persons and embraces all contracts, the court reasoned that an independent contractor is not precluded from bringing a case of action under Section 1981 for discrimination. This falls under U.S.C. Title 28 § 1331. The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, Fourteenth Amendment, or treaties of the United States.[2] Although the Third Circuit Court of Appeals argued on July 8, 2009 and filed on September 11, 2009 in *Brown v. J. Kaz, Inc.* they had not previously decided the issue. At least two of the sister courts of

---

[2] Petitioner started his owned charter bus company (Dukes Coach Lines, Inc.). Under the Federal Regulations of Title 49 C.F.R., Chapter 3 Subpart B § 390.5(a), Charter Transportation, and issued a Operating Authority number MC-373125-C in December of 1999, begin operations in the year of 2000 in the state of New Jersey. The number of listed drivers was two on drivers list, Curtis A. Dukes (owner) and Richard Mack (employee).

appeals have held that an independent contractor may bring a discrimination claim under section 1981 against the entity with which he or she contracted. *See Taylor v. ADS, Inc.*, 327 F.3d 579, 581 (7th Cir. 2003); *Webster v. Fulton County*, 283 F.3d 1254, 1257 (11th Cir. 2002); *Danco, Inc. v. Wal-Mart Stores, Inc.*, 178 F.3d 8, 13-14 (1st Cir. 1999). The Third Circuit Court of Appeals conflicts also with Eleventh Circuit and Seventh Circuit Courts of Appeals. Subject matter jurisdiction refers to a court's power to decide a particular kind of controversy. *See Gene R. Shreve & Peter Raven-Hansen*, Understanding Civil Procedure 107 (3d ed. 2002). The Third Circuit Court of Appeals have infringed on my civil and constitutional rights, denying my independent claim for violation of Title 42 U.S.C. § 1981 and Title 42 U.S.C. § 1983, Intentional Race Discrimination, Fourteenth Amendment Rights, denial of due process, procedure due process and equal protection of the law as alleged in my complaint. This Petitioner has lost his rights without a meaningful denial or even a fair opportunity to litigate his claims. Violation of my constitutional rights by the Third Circuit Panel, Fourteenth Amendment section one protects Petitioner Curtis A. Dukes, an independent contractor, the Rights Guaranteed Privileges, Property, Due Process, on August 2, 2010, the Third Circuit Court of Appeals denied Petitioner his rights pursuant to Article III of the Constitution, most certainly warranted for review.

III.

Review Is Warranted Because The Panel Of Third Circuit Court Of Appeals Denied The Equal Protection Clause Of Fourteenth Amendment To Petitioner's Continuing Violation Of Petitioner's Civil Rights Title 42 U.S.C. § 1981

The "continuing violation" doctrine allows a plaintiff in a discrimination lawsuit to admit evidence of similar wrongful acts occurring outside the period of limitation for liability and damage purposes if,

(1) There is at least one similar wrongful act within the statute, Petitioner currently vetted with the same restriction on my drivers license as in year 2005 on two different occasions Respondent issued policies that provides transportation to elementary schools, owner of Passaic Valley Coaches, Wayne Braunwarth, and drivers have no S-Endorsement on drivers license, not in compliance with the law.

Respondent violated Title 42 U.S.C. § 1981(a)(b) Statement of equal rights. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of *all laws and proceedings for the security of persons and property as is enjoyed by white citizens*, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. Wayne Braunwarth male Caucasian, driver license has no

S-Endorsement only endorsed for charter bus owner of Passaic Valley Coaches *with Board of Education Certificates of Insurance verified*, Curtis A. Dukes male African-American, driver license has no S-Endorsement only endorsed for charter buses owner of Dukes Coach Lines that had *not one Board of Education Certificate of Insurance verified, See* App.52-54. Curtis A. Dukes owner of (Dukes Coach Lines) drivers list was in compliance with the New Jersey State Law. *See* App.58. As Kathy Higham states,

> " . . . However, these buses can transport school children with chaperones to special day trips activity away from the school, such as a museum or a zoo when a larger bus is needed. The drivers must be license with a CDL Class-B, with a passenger and school bus endorsement . . . "

Richard Mack and Richard Rivers New Jersey motor vehicle abstract was approved as drivers with appellee in compliance with ***N.J.C.A. § 6A: 27-12.1*** drivers of Dukes Coach Lines. *See* App.59.

(2) The other acts are similar in nature so as to show a pattern or policy of discrimination. *See* letter dated October 5, 2009 to Judge Greenaway verifying Petitioner is currently employed by Passaic Valley ("Lancer covers Mr. Dukes") Petitioner Curtis A. Dukes has the same Board of Education Restriction on drivers license with Respondent Lancer Insurance Co. (*see* App.3b on the record) currently on policy # 155099 and policy # 160501 with two different Caucasian owned charter bus companies that has

Board of Education Certificates of Insurance as of this date November 18, 2010. *See* App.50.

The doctrine relieves a plaintiff of a limitations bar if he/she can show a series of related acts to him/her, one or more of which falls within the limitations period. *Pegram v. Honeywell, Inc.*, 361 F.3d 272, 279 (5th Cir. 2004). In the Ninth Circuit's view, a plaintiff can establish a continuing violation that allows recovery for claims filed outside of the statutory period in one of two ways. First, a plaintiff may show "a series of related acts one or more of which are within the limitations period." *Ibid.* Such a "serial violation is established if the evidence indicates that the alleged acts of discrimination occurring prior to the limitations period are sufficiently related to those occurring within the limitations period." *Ibid.* The alleged incidents, however, "cannot be isolated, sporadic, or discrete." *Ibid.* Second, a plaintiff may establish a continuing violation if he shows "a systematic policy or practice of discrimination that operated, in part, within the limitations period – a systemic violation." *Id.*, at 1015-1016.

Petitioner has made his disclosure at the lower court and to the Third Circuit Court Panel on appeal, the Panel denied Petitioner Section One of Fourteenth Amendment (Equal Protection Clause), of the continuing violation of Respondent preventing Petitioner to enter into contracts while working for a similarly situated Caucasian owned bus company insured by Respondent (Lance Insurance Co.), Respondent preventing Petitioner to enter into any

other insurance contract at the same time approving him as a driver with same restriction on Petitioner's driver license. *See* App.60.

The Third Circuit Court of Appeals denied the constitutional right of Petitioner, all persons to have the same access to the law and courts and to be treated equally by the law and courts, both in procedures and in the substance of the law. It is taking to the right to due process of law, but in particular applies to equal treatment as an element of fundamental fairness. The most famous case on the subject is *Brown v. Board of Education of Topeka* (1954) in which Chief Justice Earl Warren, for a unanimous Supreme Court, ruled that "separate but equal" educational facilities for blacks were inherently unequal and unconstitutional since the segregated school system did not give all students equal rights under the law. It will also apply to other inequalities such as differentials in pay for the same work or unequal taxation. The principle is stated in the Fourteenth Amendment to the Constitution: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Third Circuit Court of Appeals conflicts with the Supreme Court, Fifth Circuit Court and Ninth Circuit Court, on the continuing violation, along with permitting Respondent to conduct segregation against Petitioner ("Curtis A. Dukes") in the insurance industry, while the Third Circuit Court of Appeals denies Petitioner his First Amendment (petition the Government for a *redress* of grievances) and Fourth Amendment (deny

to any person within its jurisdiction the equal protection of the laws) a violation of Article III of the United States Constitution, this case must be reopened for further litigation.

IV.

Review Is Warranted Because The Panel Of Third Circuit Court Of Appeals Conflicts With The Ninth Circuit Court Of Appeals *Rooker-Feldman* And Preclusion Doctrine

The Third Circuit Court of Appeals opinion Conflicts with the Ninth Circuit as Third Circuit states the following,

> " . . . In this case, Dukes's complaint alleges injury stemming from Lancer's conduct[3], not from the New Jersey Superior Court's judgment. Accordingly, we cannot conclude that this case is barred by *Rooker-Feldman*. We do conclude, however, that for the reasons below, Dukes's complaint is barred under New Jersey law preclusion

---

[3] Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court." In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated, "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. . . . It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function – thus where the impartial functions of the court have been directly corrupted."

> principles, specifically res judicata and the entire controversy doctrine . . . "

"Fraud upon the court" makes void the orders and judgments of that court. The U.S. Supreme Court has consistently held that a void order is void at all times, does not have to be reversed or vacated by a judge, cannot be made valid by any judge, nor does it gain validity by the passage of time. The order is void ab initio. *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 41 S.Ct. 116 (1920). "Fraud destroys the validity of everything into which it enters," *Nudd v. Burrows*, 91 U.S. 426, 23 L.Ed. 286, 290 (1875), particularly when "a judge himself is a party to the fraud"; *Cone v. Harris*, 230 P. 721, 723 (Okl. 1924); *Windsor v. McVeigh*, 93 U.S. 276, 23 L.Ed. 914, 918 (1876).

As in superior state court Judge Verna Leath had been deceived by Respondent attorney Terry Su, based on deceit and fraud, a representation in a transaction which the maker knows to be capable of two interpretations, one false and the other true, if made with the intention that it be understood in the sense in which it is false, is a fraudulent misrepresentation. *Com. By Packel v. Tolleson*, 321 A.2d 664 (Pa. Cmwlth. 1974).

Judge Leath did not know Respondent has Petitioner Curtis A. Dukes driving under a second policy issued by Respondent. The District Court abused their discretion, stating this stems from out of the same insurance policy – it is not; it is against the *policy # 155099* and *policy # 160501* with two

different Caucasian owned charter bus company, Respondent attorney Terry Su conducted fraud concealment.

See Washington v. Wilmore, 407 F.3d 274, 280 (4th Cir. 2005) (holding *Rooker-Feldman* did not apply because "[plaintiff's] claim of injury rests not on the state court judgment itself, but rather on the alleged violation of his constitutional rights [by defendant]"); *Galibois v. Fisher*, 2006 WL 827326 at *2 (1st Cir. 2006), Petitioner claim is of Disparate Treatment, denial of Due Processes, Violation of the Constitutional Civil Rights Title 42 U.S.C. § 1981, Title 42 U.S.C. § 1983 violating appellant First and Fourteenth Amendment in U.S. District Court. (*Rooker-Feldman* did not come into play because plaintiff "sought relief not from an injury allegedly caused by the state court but from an injury allegedly inflicted by the defendant"); *Jackson v. Rohm & Haas Co.*, 2005 WL 1592910 at *4 (E.D. Pa. 2005) (because plaintiff's complaint alleged an injury caused not by the state court's legal error but by the defendant's alleged fraud, the *Rooker-Feldman* Doctrine was not a bar to court's subject matter jurisdiction). Suppressed evidence at State Court level attorney Terry Su is well aware Petitioner is currently insured by the Respondent named Lancer Insurance Co. as a full time driver with a similar situated Caucasian owned charter bus company Passaic Valley Coaches and has been since 1996 and concealed this information. The Panel of the Third Circuit Court of Appeals has a conflict within its own opinion stating the

Rooker-Feldman Doctrine Did not apply, because of Respondent conducted ("fraud upon the court"). Res judicata does not apply to the Third Circuit panel opinion based on Respondent's fraud.

Fraudulent concealment is grounded in common-law fraud. Accordingly, they require establishment of all of the elements of a fraud claim. The defendant made a false representation or promise about a material fact, attorney Terry Su submitted ("*school bus*") regulation *N.J.S.A. § 18-A* and *N.J.A.C. § 6A: 27-12.1* at state court hearing, a false representation of a material fact. Dukes Coach Lines was in compliance with ("*charter bus*") regulation *Title 49 C.F.R., Chapter 3 Subpart B § 390.5* attorney Terry Su did not disclose this information at court hearing on March 13, 2007 at Summary Judgment Hearing,[4] did not disclose drivers Richard Mack and Richard Rivers New Jersey motor vehicle abstract and was approved as drivers in compliance with *N.J.A.C. § 6A: 27-12.1* drivers of Dukes Coach Lines, these individuals had no restrictions on their drivers license. *See* App.58.

Respondent's fraud went as far as altered documents submitted to the state court and federal court

---

[4] Unknown to Petitioner, Attorney Joseph A. Maffongelli had just been reinstated to practice law, Petitioner attorney had been suspended by the Supreme Court of New Jersey (Essex County) *Suspension of Law Practice*, Dated July 1, 2003 Effective August 1, 2003 for the period of one year. 176 N.J. 514 (2003). Neglected to attend Summary Judgment Hearing. (*See* App.12 on the record).

(*see* App.4 filed in Court of Appeals). Respondent changed and falsified the year 2004 application *with no producer signature* and wrote charter 100% this is not Petitioner's handwriting nor signature, Fraud Fact of this Information (*see* App.8 filed in Court of Appeals) it clearly states *common carrier* not contract carrier. Respondent approved and accepted the renewal application preparation review dated January 10, 2005. The Petitioner signed on January 24, 2005 "I, the Petitioner Curtis A. Dukes certified the "January 10, 2005" application to be true and, returned back to Robert Chernin insurance agent as requested." Respondent then submitted a second falsified 2005 application dated March 24, 2005 to Judge Verna Leath on March 13, 2007. This application was the application not valid. (*See* App.4 on the record) in violation of Title 49 C.F.R., Transportation Subpart B § 390.35(b)(c) also *see* § 390.37. There is a sixty day preparation period for renewal not a four day preparation, why would Petitioner sign a renewal application preparation four days before the policy ends? That is against The Federal Law. Lancer Insurance Co. is in violation of Title 49 C.F.R., Subpart B § 390 et al. The Respondent must have a copy of these regulatory guidelines on file in order to write commercial insurance policies by Federal Law.

Furthermore the 60% of schoolwork stated at safety inspection on May 5, 2005 was for Adults Education of Hunterdon County Education Service specifically. *See* App.52 thru 54, Respondent had a copy of this fact at state court hearing; attorney Terry

Su deliberately remained silent. It is a fact Terry Su the attorney for the Respondent at the state court hearing on March 13, 2007 committed a criminal act fraudulent concealment Title 18 U.S.C.§ 4, Petitioner has *plead and proven* that the particular circumstances imposed a duty to speak on the Respondent, but the Respondent deliberately remained silent. *See, e.g., Lane v. Halliburton*, 529 F.3d 548, 27 I.E.R. Cas. (BNA) 1254, R.I.C.O. Bus. Disp. Guide (CCH) ¶ 11491 (5th Cir. 2008); *Livingston v. H.I. Family Suites, Inc.*, 2006 WL 1406587 (M.D. Fla. 2006).

The Third Circuit Court conflicts with the Ninth Circuit. The Ninth Circuit ruled *Kougasian v. Tmsl,* 359 F.3d 1136 (2003), that extrinsic fraud on a court is, by definition, not an error by that court. It is, rather, a wrongful act committed by the party or parties who engaged in the fraud. *Rooker-Feldman* therefore does not bar subject matter jurisdiction when a federal plaintiff alleges a cause of action for extrinsic fraud on a state court and seeks to set aside a state court judgment obtained by that fraud. An issue or claim is not precluded in federal court merely because it already has been, or could have been, decided by a state court. Issue and claim preclusion (collateral estoppel and res judicata) have specific requirements that must be satisfied before preclusion can be found.

The Third Circuit Court of Appeals point to New Jersey's entire controversy doctrine does not apply based on Respondent's fraud upon the court. Fraud vitiates all proceedings, "Fraud upon the court" has

been defined by the Seventh Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The Seventh Circuit further stated, "A decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

V.

Review Is Warranted Because This Case Is Of National Importance The Panel Of Third Circuit Court Of Appeals

The Panel of the Third Circuit Court of Appeals conflicts with the Ninth Circuit Court of Appeals in *Briones v. Riviera Hotel Casino Case*, # 96-15076, 116 F.3d 379 (1997). The Ninth Circuit states this court has held that "[i]gnorance of court rules does not constitute excusable neglect, even if the litigant appears pro se." *Swimmer v. IRS*, 811 F.2d 1343, 1345 (9th Cir. 1987); cf. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) ("Pro se litigants must follow the same rules of procedure that govern other litigants."). Recent United States Supreme Court authority requires that we reexamine *Swimmer*.

The Panel of the Third Circuit Court of Appeals, Judges, somehow let attorney Brian M. Thorn take control of the Court and allowed this attorney to

commit a Federal Crime *Title 18 U.S.C. § 4* and *Title 18 U.S.C. § 1505,* unethical attorney behavior, unprofessional conduct toward the United States District Court and Court of Appeals, by evidence of the docket report case # 10-1022 violating Federal Rules of Civil Procedure filing a (12)b motion to dismiss on January 21, 2009, after filing a responsive answer and this Court of Appeals concurred it on August 2, 2010, in which he is time barred, it is fifty six days past due.

Furthermore Respondent attorney "inexcusable neglect" filing on time in the Court of Appeals for the Third Circuit, on January 5, 2010, Respondent was sent a letter to file appearance of counsel. On January 25, 2010, the Third Circuit Court sent a follow up letter to Respondent counsel to appear as counsel. On January 28, 2010, Respondent filed notice of appearance. On February 2, 2010, Petitioner filed a motion warning Respondent to adhere to deadlines. Respondent's attorney actions of "inexcusable neglect" are with merit of filings in the Court of Appeals for the Third Circuit, violating Rule 27 Motions. Petitioner filed a motion to supplement the appendix and add addition pages to Petitioner's brief on February 25, 2010. Respondent filed a Rule 27(3)(A) opposition to the motions on March 11, 2010, the Respondent once again conducted negligence to the court rules, this "time barred" opposition was filed out of time to Petitioner's motion. Respondent attorney received a copy of the motion for additional pages on February 26, 2010, at 3:35 pm certified mail return receipt # 7009-0080-1564-4386. For the above stated reasons,

the Third Circuit abused its discretion and denied Petitioner's motion for additional appendix and at a later date granted Respondent's ("Null and Void") 12(b) Motion to Dismiss.

The Respondent's motion for dismissal was presented for improper purpose, to harass, cause unnecessary delay. Respondent attorney had not stated any reason for "excusable neglect" in his moving papers, for filing his motion to dismiss, out of time. The Supreme Court has recently analyzed the circumstances under which missing a filing deadline counts as "excusable" or "inexcusable" neglect. The Court concluded that the determination of "excusable" is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. This includes the danger of prejudice; the length of the delay and its potential impact on judicial proceedings; the reason for the delay, including whether it was within the reasonable control of the movant and whether the movant acted in good faith. This four-part analysis, though not exclusive, provides a framework with which to determine whether missing a filing deadline constitutes "excusable" neglect.

The Supreme Court analyzed the circumstances under which missing a filing deadline counts as "excusable" or "inexcusable" neglect in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993), in that case, creditors of a Chapter 11 debtor sought to extend the bar date for filing proofs of claim under a

bankruptcy rule (Rule 9006(b)) which gave discretion to the court to allow late filings where lateness was the result of excusable neglect. This does not apply to Respondent ("Lancer") attorney. I will rely on my complaint and other moving papers, Respondents fifty six days time barred motion to dismiss is ("Null And Void") inexcusable.

It was an abuse of discretion by the Third Circuit Court of Appeals to deny petition for Fraud and Continuing Violation in case # 10-1022 pursuant to Appellant Rule Civil Procedure Rule 40. Abuse of discretion does not necessarily imply a willful abuse, or intentional wrong. In a legal sense, discretion is abused whenever, in its exercise, a court exceeds the bounds of reason – all the circumstances before it being considered. *Sharon v. Sharon*, 75 Cal. 1 (Cal. 1888). "The term as used in the decisions of courts and in the books, implying, in common parlance, a bad motive or wrong purpose, is not the most appropriate. It is really a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence." *Murray v. Buell*, 74 Wis. 14 (Wis. 1889). Abuse of discretion occurs when a court does not apply the correct law or if it bases its decision on a clearly erroneous finding of a material fact. A court may also abuse its discretion when the record contains no evidence to support its decision. Abuse of discretion is one of the reasons a court of appeals may use to reverse the trial court's judgment. Respondent's Continuing Violation defeats Respondent res judicata doctrine.

The Panel of the Third Circuit Court of Appeals abused its discretion. Petitioner filed his motion pursuant to Federal Rule Civil Procedure Rule 60(b) in the District Court, and it was later denied. The District Court violated my fourteenth amendments Rights as Supreme Court for analysis states: Because the standard under Rule 60(b) is an equitable standard, *see Briones*, 116 F.3d at 381, it may follow that in some circumstances, a district court may satisfy the standard even though omitting to discuss some specified factor. However, we conclude that it will always be a better practice for the district court to touch upon and analyze at least all four of the explicit *Pioneer-Briones* factors, namely: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith." *Bateman v. United States Postal Service*, 231 F.3d 1220, 1223-24 (9th Cir. 2000) (*citing Pioneer*, 507 U.S. at 395, 113 S.Ct. 1489).

Judge Greenaway denied Petitioner Due Process. I was denied discovery regarding my claims of Intentional Fraud Upon the Court, that certainly prohibited preclusion defenses as does unconscionable conduct, or bad faith directly related to the matter at issue that injures the other party and affects the balance of equities. This court does have subject matter jurisdiction over my federal claims. The State Court ***had no jurisdiction*** over Dukes Coach Lines because it was no longer in business. This information was known to the attorneys for Lancer Insurance and

they still filed a frivolous motion to dismiss. This case must be reopened, Petitioner is seeking relief based on an independent action in equity to set aside a fraudulently obtained judgment pursuant to *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128 (9th Cir. 1995); and *Great Coastal Express v. International Brotherhood of Teamsters*, 675 F.2d 1349 (4th Cir. 1982).

There is no time limitation that would bar a judge from setting aside a judgment for fraud upon the Court. *See MacDonald v. MacDonald*, 407 Mass. 196, 202 n.10 (1990). A fraud on the Court occurs where it can be demonstrated, clearly and convincingly, that a party has sentimentally set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense as being done here.

This case is of a National Importance: The conflict of how the Federal Court denied Petitioner discovery at January 6, 2009, conference after Respondent answered the Complaint, the District Court judge permitted the Respondent attorney to commit a criminal act ("perjury"), and the Court of Appeals violated Article III and denied Petitioner his Constitutional rights to be heard in a Court of Law.

How can Petitioner drive for Passaic Valley Coaches and S&E Transportation two different Caucasian owned bus companies, that possess Board of Education contracts, insured by Lancer Insurance

Co., cannot own, or drive, his own bus, Respondent after three years insuring Petition for his own company, then at a later date, terminated Petitioner coverage, that did not have Board of Education contracts, after eight months in 2005-2006 policy, with no accident claims reported at all. The cancellation of Petitioner policy was based on my race (African-American), not company profile, Intentional Race Discrimination. Respondent Lancer Insurance knew that Petitioner Curtis A. Dukes was a driver on another policy. Respondent had full knowledge about the restriction on Petitioner's drivers license in year of 2003 verified through Petitioner's employer ("Passaic Valley Coaches") when they put Curtis A. Dukes out of business. *See* App.55-56.

The Panel of the Third Circuit Court of Appeals denied Petitioner Curtis A. Dukes his First Amendment rights, Fourteenth Amendment rights, and violated Article III of the United States Constitution. For the above-stated facts of merits to this case, authenticated and filed documents, Petitioner requests this writ of certiorari be granted.

Respectfully submitted,

CURTIS A. DUKES
1253 Springfield Ave.
Suite 301
New Providence, NJ 07974
973-590-7423

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-1022

CURTIS A. DUKES,

Appellant

v.

LANCER INSURANCE CO, Et Als

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil No. 2:08-cv-04948)
District Judge: Honorable Joseph A. Greenaway, Jr.

Submitted Pursuant to
Third Circuit LAR 34.1(a)
July 29, 2010

Before: SMITH, FISHER and
GARTH, *Circuit Judges*

(Opinion filed: August 2, 2010)

OPINION

PER CURIAM.

Curtis Dukes, proceeding pro se, appeals from the District Court's order entered on September 25, 2009, dismissing his complaint for lack of jurisdiction, and from its order entered on December 5, 2009, denying his motion for relief pursuant to Fed. R. Civ. P. 60(a) and (b). For the reasons that follow, we will modify the September 25 order, affirm that order as modified, and affirm the December 5 order.

I.

Because the background of this case is familiar to the parties, we discuss it only briefly here. In 2005, Dukes owned Dukes Coach Lines, Inc., a bus company that held an insurance policy issued by Lancer Insurance Company ("Lancer"). In October 2005, Lancer informed Dukes that it was cancelling the policy, effective in thirty days. Dukes claims that the cancellation of the policy ultimately caused his company to go out of business.

In April 2006, Dukes, then represented by counsel, filed a lawsuit – on behalf of himself and Dukes Coach Lines – against Lancer in New Jersey Superior Court. The complaint alleged that Lancer's cancellation of the insurance policy was arbitrary and capricious, and amounted to misrepresentation and fraud. Lancer subsequently moved for summary judgment. In March 2007, the Superior Court granted the motion, holding that Lancer "was entitled to cancel the insurance policy" and "followed the statutory and

regulatory provisions for [doing so]." (Appendix at 136-37.)

In July 2008, Dukes, acting on behalf of himself and Dukes Coach Lines, filed a pro se complaint against Lancer in the United States District Court for the District of New Jersey.[1] The complaint alleged that Lancer discriminated against him and his company when it cancelled the insurance policy. In August 2008, the District Court dismissed the complaint without prejudice for lack of subject matter jurisdiction, noting that "the mere invocation of a constitutional right is not sufficient to provide a basis to invoke this Court's jurisdiction." (*Id.* at 231.)

About two months later, Dukes filed another pro se complaint against Lancer in the District Court, this time on behalf of himself alone. This new complaint raised a number of claims – both state and federal – all stemming from Lancer's cancellation of the insurance policy. The claims centered on his allegation that Lancer cancelled the policy because he is black. Lancer subsequently moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6), arguing that the complaint was barred by, inter alia, res judicata and New Jersey's entire controversy doctrine.

---

[1] We note that a pro se litigant may not file a complaint on behalf of a corporation. *See Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201-02 (1993).

On September 25, 2009, the District Court entered an order dismissing Dukes's complaint, but on grounds different from those raised by Lancer: the court concluded that the complaint was barred by the *Rooker-Feldman* doctrine. Dukes subsequently filed a motion seeking relief from this decision pursuant to Rule 60(a) and (b), which the court denied in an order entered on December 5, 2009. Dukes now seeks review of both the September 25 and December 5 orders.

II.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court's decision to dismiss Dukes's claims, *see AT&T Corp. v. JMC Telecom, LLC*, 470 F.3d 525, 530 (3d Cir. 2006), and review the court's denial of his motion filed pursuant to Rule 60(a) and (b) for abuse of discretion. *See Pfizer Inc. v. Uprichard*, 422 F.3d 124, 129 (3d Cir. 2005) (standard of review for denial of Rule 60(a) motion); *Brown v. Philadelphia Hous. Auth.*, 350 F.3d 338, 342 (3d Cir. 2003) (standard of review for denial of Rule 60(b) motion). We may affirm the District Court's judgment on any basis supported by the record. *See Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999).

"The *Rooker-Feldman* doctrine deprives a federal district court of jurisdiction in some circumstances to review a state court adjudication." *Turner v. Crawford Square Apartments III, L.P.*, 449 F.3d 542, 547

(3d Cir. 2006). The doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). This doctrine is narrow, *see id.*, and a district court is not barred from exercising subject matter jurisdiction over an action "simply because a party attempts to litigate in federal court a matter previously litigated in state court." *Id.* at 293. Indeed, "[i]f a federal plaintiff presents some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party, then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion." *Id.* (internal quotation marks and citations omitted).

In this case, Dukes's complaint alleges injury stemming from Lancer's conduct, not from the New Jersey Superior Court's judgment. Accordingly, we cannot conclude that this case is barred by *Rooker-Feldman*. We do conclude, however, that for the reasons below, Dukes's complaint is barred under New Jersey law preclusion principles, specifically res judicata and the entire controversy doctrine.[2]

---

[2] To the extent Dukes argues that Lancer waived these affirmative defenses by failing to timely raise them, this claim is belied by the record.

Under the doctrine of res judicata, "a cause of action between parties that has been finally determined on the merits by a tribunal having jurisdiction cannot be relitigated by those parties or their privies in a new proceeding." *Velasquez v. Franz*, 589 A.2d 143, 147 (N.J. 1991). Accordingly, to the extent Dukes's complaint in the instant case sought to reassert any of the claims from his state court proceeding – claims that were adjudicated on the merits – those claims are barred here. As for his claims that were not raised in the state court proceeding, the issue is whether those claims are barred by New Jersey's entire controversy doctrine.

The entire controversy doctrine, codified in Rule 4:30A of the New Jersey Rules of Civil Procedure, "embodies the notion that the adjudication of a legal controversy should occur in one litigation in only one court." *Rycoline Prods., Inc. v. C & W Unlimited*, 109 F.3d 883, 885 (3d Cir. 1997) (internal quotation marks and citation omitted). "This doctrine requires that a person assert in one action all related claims against a particular adversary or be precluded from bringing a second action based on the omitted claims against that party." *In re Mullarkey*, 536 F.3d 215, 229 (3d Cir. 2008) (internal quotation marks and citation omitted).

As the New Jersey Supreme Court has explained,

> [i]n determining whether successive claims constitute one controversy for purposes of the doctrine, the central consideration is

> whether the claims . . . arise from related facts or the same transaction or series of transactions. It is the core set of facts that provides the link between distinct claims against the same or different parties and triggers the requirement that they be determined in one proceeding.

DiTrolio v. Antiles, 662 A.2d 494, 502 (N.J. 1995) (citations omitted). The doctrine does not apply where the claims raised in the second litigation were "unknown, unarisen, or unaccrued at the time of the original action." *In re Mullarkey*, 536 F.3d at 229 (citation omitted). Moreover, for the doctrine to apply, "the first forum must have been able to provide all parties with the same full and fair opportunity to litigate the issues and with the same remedial opportunities as the second forum." *Hernandez v. Region Nine Hous. Corp.*, 684 A.2d 1385, 1393 (N.J. 1996) (quotation marks and citation omitted).

Given these principles, we conclude that the entire controversy doctrine applies here. Both Dukes's instant case and his earlier, state court action were brought by Dukes against Lancer and presented claims stemming from the same core set of facts: Lancer's cancellation of the insurance policy. Dukes has failed to establish that his newly raised claims were "unknown, unarisen, or unaccrued" at the time of his state court proceeding, or that the New Jersey Superior Court failed to afford him a full and fair

opportunity to raise these claims in that forum.[3] Accordingly, he is precluded from raising these claims here.

Although we agree with the District Court that Dukes's instant claims are barred, we will modify the court's September 25, 2009 order in two respects before we affirm that judgment. First, because it appears that Lancer's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) should have been characterized as a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c),[4] the order should enter judgment in favor of Lancer instead of dismissing Dukes's claims. Second, because neither res judicata

---

[3] Dukes argues that he did not have a "reasonable opportunity" to pursue his claims in state court because his counsel in that proceeding failed to cite any statutes in his complaint and did not attend the summary judgment hearing. The fact remains, however, that the state court afforded Dukes a full and fair opportunity to raise his claims, and he has not demonstrated that the alleged deficiencies in counsel's performance prevented him from arguing that Lancer's cancellation of the insurance policy was the product of racial discrimination.

[4] Pursuant to Fed. R. Civ. P. 12(b), a motion to dismiss under Rule 12(b)(6) must be filed *before* a responsive pleading. In this case, it appears that Lancer did not file its motion to dismiss before it filed its answer. Under these circumstances, the court could have treated Lancer's motion as a motion for judgment on the pleadings under Fed. R. Civ. P. 12(c). *See* Fed. R. Civ. P. 12(h)(2); *Turbe v. Government of the Virgin Islands*, 938 F.2d 427, 428 (3d Cir. 1991). That the court did not do so is harmless, and construing the motion as a motion for judgment on the pleadings instead of a motion to dismiss does not alter the standard by which we review the court's September 25, 2009 order. *See Turbe*, 938 F.2d at 428.

nor the entire controversy doctrine serves as a *jurisdictional* bar to Dukes's claims, *see Exxon Mobil Corp.*, 544 U.S. at 293 (noting that preclusion "is not a jurisdictional matter"), the order language's reference to the court's "lack of subject matter jurisdiction" should be stricken.

In light of the above, we will affirm the District Court's September 25, 2009 order as modified, and affirm the court's December 5, 2009 order denying Dukes's motion filed pursuant to Rule 60(a) and (b).[5] Dukes's requests to expand the record are denied.

---

[5] We have considered the various arguments raised in Dukes's briefing and conclude that they lack merit. Additionally, given our resolution of this case, we need not address whether Dukes himself is the proper plaintiff in this case.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-1022

CURTIS A. DUKES,

Appellant

v.

LANCER INSURANCE CO, Et Als

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civ. No. 2:08-cv-04948)
District Judge: Honorable Joseph A. Greenaway, Jr.

Submitted Pursuant to
Third Circuit LAR 34.1(a)
July 29, 2010

Before: SMITH, FISHER and
GARTH, *Circuit Judges*

JUDGMENT

Filed August 2, 2010

This cause came to be considered on the record from the United States District Court for the District

of New Jersey and was submitted pursuant to Third Circuit LAR 34.1(a) on July 29, 2010. On consideration whereof, it is now hereby

ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered on September 25, 2009 is modified *as set forth in the foregoing per curiam opinion* and AFFIRMED, and the judgment of the District Court entered on December 5, 2009, is AFFIRMED. Costs taxed against Appellant. All of the above in accordance with the opinion of this Court.

ATTEST:
/s/ Marcia M. Waldron
Clerk

DATED: August 2, 2010

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CURTIS A. DUKES., ET ALS, Plaintiff, v. LANCER INSURANCE CO., ET ALS, Defendant.	Civil Action No. 08-4948 (JAG) **ORDER** (Filed Dec. 4, 2009)

GREENAWAY, JR., U.S.D.J.

This matter comes before this Court on the motion (Docket Entry No. 56) filed by plaintiff, Curtis A. Dukes ("Plaintiff"), seeking reconsideration, pursuant to FED. R. CIV. P. 60(b), of this Court's decision granting the motion filed by defendant, Lancer Insurance Co. ("Defendant"),[1] to dismiss the amended complaint. For the reasons set forth below, this motion will be denied.

On April 19, 2006, Plaintiff filed a lawsuit in New Jersey Superior Court, Essex County. The law suit alleges that the cancellation of an insurance

[1] Although only naming one defendant –Lancer Insurance – in the complaint, Plaintiff refers to this single entity as "Lancer Insurance Co., Inc. et als." This Court will refer to the defendant in the singular. Similarly, Plaintiff refers to himself as "Curtis A. Dukes, et als." This Court will refer to him in the singular.

policy Plaintiff's company had with Defendant was arbitrary and caused him to suffer loss of business. (Superior Court Compl., Docket No. L-003338-06, attached as Ex. F to Def.'s Mem. of Law in Support of Mot. to Dismiss [hereinafter "Ex. F"] 1.) All of Plaintiff's claims in that matter were state law claims, including fraud, misrepresentation, and contract claims. (*Id.* at ¶¶ 4-6.)

On March 13, 2007, Superior Court Judge Verna G. Leath granted Defendant's motion for summary judgment, holding that Lancer was "entitled to cancel the insurance policy" due to a material misrepresentation on Plaintiff's renewal application. (Tr. of Decision of Hon. Verna G. Leath, attached as Ex. I to Def.'s Mem. of Law in Support of Mot. to Dismiss [hereinafter "Ex. I"] 11:19-12:8.) Further, the Superior Court held that Lancer properly followed the statutory and regulatory provisions for cancelling the insurance policy. (*Id.* at 12:6-8.)

On July 22, 2008, Plaintiff initiated a federal suit seeking money damages in the amount of $150,000,000.00, alleging civil rights claims arising out of the same cancellation of his insurance policy. (Civil Action No. 08-3648 (SRC), attached as Ex. A to Def.'s Mem. of Law in Support of Mot. to Dismiss [hereinafter "Ex. A"].) In that complaint, Plaintiff alleged that Defendant engaged in disparate treatment of small and minority-owned businesses. (*Id.*) On August 27, 2008, Judge Stanley R. Chesler of the District of New Jersey dismissed Plaintiff's complaint, without prejudice, for lack of subject matter

jurisdiction. (Order, attached as Ex. C to Def.'s Mem. of Law in Support of Mot. to Dismiss [hereinafter "Ex. C"].)

On October 22, 2008, Plaintiff filed a complaint in federal court alleging numerous claims, both federal and state, all arising out of the same insurance policy at issue in the previous state action. By order dated September 24, 2009, this Court dismissed the complaint, concluding that, based on the *Rooker-Feldman* doctrine,[2] subject matter jurisdiction was lacking.

Plaintiff asks this Court to reconsider the dismissal of his complaint, alleging that he "was denied due process[,] this case has merit and certainly the ruling by the State Court was obtained by intentional fraud upon the court." (Notice of Mot. for Relief Under Rule 60(a) [&] (b) 1.) The crux[3] of Plaintiff's

---

[2] The *Rooker-Feldman* doctrine arose from two cases decided by the Supreme Court of the United States – *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923) and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

[3] In his lengthy submissions to this Court, Plaintiff mentions other concerns, such as the erroneousness of the state court's decision and the ineffectiveness of his trial counsel, all of which were raised in Plaintiff's complaint. Plaintiff also argues that Defendant's motion to dismiss was frivolous, and that Defendant's counsel should be sanctioned for his actions in this case. These issues were previously raised in Plaintiff's opposition to the motion to dismiss, as well as other submissions made by Plaintiff. Since these matters provide no new information, they do not form the basis for this Court to reconsider the decision that subject matter is lacking in this case.

argument appears to be that both this Court[4] and Magistrate Judge Madeline Cox Arleo have committed fraud on the court by dismissing his complaint (Mem. in Support of Notice of Mot. for Relief Pursuant to Rule 60(a) (b) [sic] Fed. R. Civ. Pro. [hereinafter "Br."] 16, 17), and that Judge Chesler's order dismissing his first complaint without prejudice serves to create subject matter jurisdiction for his second complaint (Br. 10-11). Specifically, Plaintiff states that this Court "denied [Plaintiff's] complaint as a result of intentional fraud upon [Judge Greenaway's] own court and obstruction of justice." (Br. 20.)

FED. R. CIV. P. 60(b) provides that "the court may relieve a party . . . from a final judgment, order, or proceeding for . . . (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party." In order to prevail, the moving party "must establish that the adverse party engaged in fraud or other misconduct, and that this conduct prevented the moving party from fully

---

[4] Plaintiff also appears to seek this Court's spontaneous recusal from this case. Plaintiff bases this request on this Court's "appearance of partiality," as evidenced by the decision granting Defendant's motion to dismiss. (Br. 32-33, 35-37.) Ruling against a party, without more, is an insufficient basis for recusal. *Liteky v. United States*, 510 U.S. 540, 555 (1994) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion."); *Lewis v. Bell Atlantic/Verizon*, 321 F. App'x 217, 221 (3d Cir. 2009) ("Unfavorable rulings do not form an adequate basis for recusal.").

and fairly presenting his case." *Stridiron v. Stridiron*, 698 F.2d 204, 206-07 (3d Cir. 1983). A motion under FED. R. CIV. P. 60(b)(3) must be made no more than one year after the entry of the judgment, order, or proceeding. FED. R. CIV. P. 60(b).

In his current motion, Plaintiff fails to satisfy this standard. Plaintiff does not provide any information demonstrating that an adverse party[5] engaged in fraud that prevented him from fully and fairly presenting his case. Rather, Plaintiff focuses on the decision made by this Court. In reaching its decision, this Court applied the *Rooker-Feldman* doctrine. This Court's application of a well-established legal standard does not constitute fraud.

Therefore, this Court having considered the parties' submissions, and good cause appearing.

IT IS, on this 25th day of November, 2009.

ORDERED that Plaintiff's motion seeking reconsideration (Docket Entry No. 56) is DENIED; and it is further

---

[5] As he did in his opposition to the motion to dismiss, Plaintiff argues that Defendant's typographical error in the docket number of this case constitutes fraud. It does not. Even if a typographical error constituted fraud, Plaintiff has failed to demonstrate how this error interfered with his ability to present his case.

ORDERED that a copy of this Order be served on all parties within seven (7) days of the date of entry of this Order.

S/ Joseph A. Greenaway, Jr.
JOSEPH A. GREENAWAY, JR.,
U.S.D.J.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CURTIS A. DUKES., ET ALS, Plaintiff, v. LANCER INSURANCE CO., ET ALS, Defendant.	Civil Action No. 08-4948 (JAG) **OPINION** (Filed Sep. 24, 2009)

GREENAWAY, JR., U.S.D.J.

This matter comes before this Court on the motion (Docket Entry No. 31) filed by defendant, Lancer Insurance Co. ("Defendant" or "Lancer"),[1] seeking to dismiss plaintiff Curtis A. Dukes's ("Plaintiff") complaint,[2]

[1] Although only naming one defendant – Lancer Insurance – in the complaint, Plaintiff refers to this single entity as "Lancer Insurance Co., Inc. et als." This Court will refer to the defendant in the singular.

[2] Although the motion refers to dismissing the complaint, the memorandum and certification of counsel both reference the amended complaint. As such, this Court will construe the motion as one to dismiss the amended complaint. Additionally, this Court notes that, as a general matter, once an amended complaint is filed, that document replaces all prior complaints. *Snyder v. Pascack Valley Hospital*, 303 F.3d 271, 276 (3d Cir. 2002) ("An amended complaint supercedes the original version in providing the blueprint for the future course of a lawsuit.").

(Continued on following page)

pursuant to FED. R. CIV. P. 12(b)(6).[3] For the reasons set forth below, this Court lacks subject matter jurisdiction over Plaintiff's complaint. Therefore, the complaint will be dismissed, with prejudice.

I. FACTUAL BACKGROUND

Plaintiff, owner of Dukes Coach Lines, Inc., received notification from Lancer on or about October 5, 2005 that the insurance policy covering the business would be cancelled in 30 days. (Compl. ¶ 7.) Plaintiff states that he had renewed the policy to run from March 28, 2005 to March 28, 2006 for a premium of $14,700.60 for the year. (*Id.* at ¶¶ 8-9.) On

---

However, since Plaintiff is proceeding pro se, this Court must construe his submissions broadly. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *United States v. Day*, 969 F.2d 39, 42 (3d Cir. 1992). Here, it appears that Plaintiff intended to supplement his original complaint with information provided in his amended complaint. That is, Plaintiff's amended complaint simply adds four counts to his original complaint, without repeating any of the original counts from the complaint. Therefore, construing the relationship between these two documents broadly, this Court will treat the amended complaint as supplementing, rather than replacing, the original complaint. As a result, the two complaints will be considered together.

[3] Defendant argues that Plaintiff's complaint is barred by res judicata, collateral estoppel, and the entire controversy doctrine. In addition, Defendant argues that the complaint should be dismissed for lack of subject matter jurisdiction. Although motions to dismiss based on lack of subject matter jurisdiction should be brought pursuant to FED. R. CIV. P. 12(b)(1), the failure to cite the correct rule is not material to this Court's analysis.

the renewal application, Plaintiff indicated that there were no changes to the policy. (*Id.* at ¶ 8.) In addition to Plaintiff, Plaintiff's company employed two drivers, Rick Mack and Richard Rivers, both of whom were covered by the insurance policy. (*Id.*) Plaintiff's license was restricted, and he was not authorized to work for any school board in New Jersey, but neither of his employees had any such restriction. (*Id.* at ¶ 7.) Plaintiff contends that the cancellation of this insurance policy caused Dukes Coach Lines, Inc. to go out of business. (*Id.* at ¶ 11.)

On April 19, 2006, Plaintiff filed a lawsuit in New Jersey Superior Court, Essex County, alleging that the cancellation of the policy was arbitrary and caused him to suffer loss of business. (Superior Court Compl., Docket No. L-003338-06, attached as Ex. F to Def.'s Mem. of Law in Support of Mot. to Dismiss [hereinafter "Ex. F"] 1.)[4] All of Plaintiff's claims in that matter were state law claims, including fraud, misrepresentation, and contract claims. (*Id.* at ¶¶ 4-6.) On March 13, 2007, Superior Court Judge Verna

---

[4] In reviewing a motion to dismiss, pursuant to Rule 12(b)(6), a court may consider the allegations of the complaint, as well as documents attached to or specifically referenced in the complaint, and matters of public record. *Pittsburgh v. W. Penn Power Co.*, 147 F.3d 256, 259 (3d Cir. 1998); *see also* 5B Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure*: Civil 3d § 1357 (3d ed. 2007). However, in determining whether this Court has subject matter jurisdiction over a matter, this Court can look to matters outside of the complaint. *See, e.g., Berardi v. Swanson Memorial Lodge No. 48 of the Fraternal Order of Police*, 920 F.2d 198, 200 (3d Cir. 1990).

G. Leath granted Lancer's motion for summary judgment, holding that Lancer was "entitled to cancel the insurance policy" due to a material misrepresentation on Plaintiff's renewal application. (Tr. of Decision of Hon. Verna G. Leath, attached as Ex. I to Def.'s Mem. of Law in Support of Mot. to Dismiss [hereinafter "Ex. I"] 11:19-12:8.) Further, the Superior Court held that Lancer followed the statutory and regulatory provisions for cancelling the insurance policy. (*Id.* at 12:6-8.)

On July 22, 2008, Plaintiff initiated a federal suit seeking money damages in the amount of $150,000,000.00, alleging civil rights claims arising out of the same cancellation of his insurance policy. (Civil Action No. 08-3648 (SRC), attached as Ex. A to Def.'s Mem. of Law in Support of Mot. to Dismiss [hereinafter "Ex. A"].) In that complaint, Plaintiff alleged that Defendant engaged in disparate treatment of small and minority-owned businesses. (*Id.*) On August 27, 2008, Judge Stanley R. Chesler of the District of New Jersey dismissed Plaintiff's complaint, without prejudice, for lack of subject matter jurisdiction. (Order, attached as Ex. C to Def.'s Mem. of Law in Support of Mot. to Dismiss [hereinafter "Ex. C"].)[5]

---

[5] Arguably, the case pending before this Court was intended as an amendment to the case filed before Judge Chesler. In fact, Plaintiff commented that "[i]n accordance with the Order of Judge Chesler Plaintiff filed, modified, supplement[ed] his complaint to comply with his Order at docket number 2:08-cv-03648."

(Continued on following page)

Plaintiff filed the present case on October 22, 2008, alleging numerous claims, both federal and state, all arising out of the same insurance policy at issue in the previous state action. Plaintiff alleges that[6]

> The Jurisdiction of this forum is predicated upon violations of the Plaintiff's Civil and Constitutional Rights, under color of law pursuant to New Jersey Law Against Discrimination *N.J.S.A.* 10:5-1 to 49 et seq., and the Civil Rights Act of 1991, Intentional Overt Discrimination, Retaliation in violation of the New Jersey Law Against Discrimination Disparate Treatment, and Title VII [28] U.S.C. [§§] 2000e-5(g), 2000e-3(a) Opposition Clause 2000e-2 Disqualification [collectively, "Title VII"] Title VII 42 U.S.C. § 2000e-3(a) opposed activity, Plaintiff is also

---

(Notice of Mot. for Order to Show Cause 6.) Additionally, Plaintiff noted that, in response to Judge Chesler's dismissal without prejudice, "Plaintiff cured said defects and resubmitted his complaint docket number 02:08-cv-04948." (Mem. of Judicial Notice to the Hon. Joseph A. Greenaway, Jr., U.S.D.J. for the Recusal of the Hon. Madeline Cox Arleo, United States Magistrate Judge, Because of the Appearance of Impropriety, Abuse of Discretion, Pro Se Bias, Acting as the Advocate for the Defendants 10.) In fact, Plaintiff stated that "[b]ecause of my pro se status Judge Chesler gave this pro se litigant, Curtis A. Dukes, the right to file a new complaint with a new docket number. (*Id.* at 13.) Despite Plaintiff's intention that the present complaint serve as an amendment to his original case, when Plaintiff filed the present complaint, the Clerk's Office opened a new case.

[6] Irregularities in capitalization, spelling, and punctuation are in the original.

> alleging violations of Title 42 U.S.C. § 1981, the U.S. Constitution and the Constitution of New Jersey, Fraud & Misrepresentation, Breach of Contract and/or Promissory Estoppel, Negligence, Negligence on the part of Lancer Insurance Company, the insurer, Intentional Infliction of Emotional Distress as a result of said discriminatory animus as well as other common law and torts which this court has pendent jurisdiction over the state law claims. Venue is proper in the United States District Court for the District of New Jersey the acts of the Defendants has infringe[d] on this Plaintiff's Civil and Constitutional Rights under 42 U.S.C. § 1983 ("§1983"), Fourteenth Amendment, equal protection of the law, due process, First Amendment, Forth [sic] Amendment, Defendants also violated U.S. Department of Transportation Federal Highway Administration CFR Title-49 Part 383 Subpart-A (383.1) et seq., the Covenant of Good Faith and Fair Dealings, Uniform Commercial Code, as codified in New Jersey N.J.S.A. 12A:2-103(1)(b) et seq.

(Compl. ¶ 4.) Plaintiff also alleges negligent hiring (*id.* at ¶ 25), mental distress (*id.* at ¶ 40), negligent misrepresentation (*id.* at ¶ 47), and violations of 42 U.S.C. § 1982 (Am. Compl. ¶ 18). Plaintiff's claims center on his contention that the insurance policy was cancelled because he is African-American, and that it would not have been cancelled if he were Caucasian. (Compl. ¶ 12.) Plaintiff asks for a lump sum of $150 million, claiming compensatory, consequential and

punitive damages, as well as attorney's fees[7] and costs. (*Id.* at p. 43.)

On December 4, 2008, Magistrate Judge Madeline Cox Arleo ordered Plaintiff to join the corporate entity, Dukes Coach Lines, Inc., as an additional plaintiff, by January 2, 2009 as the real party in interest, and retain counsel. (Docket Entry No. 9.)[8] On December 15, 2008, Plaintiff filed a motion for sanctions against opposing counsel. (Docket Entry No. 18.)[9] On January 30, 2009, Plaintiff filed a motion for an "Order to Show Cause why the Defendant's Motion To Dismiss . . . is improperly before this Court [and] should be denied as a matter of law." (Docket Entry No. 35.) Essentially, this motion is an opposition to the motion to dismiss, as well as a brief in support of Plaintiff's motion seeking the recusal of

---

[7] Plaintiff is pro se, and not represented by an attorney. As a result, he is not entitled to recovery for attorney's fees. *Cf. Kay v. Ehrler*, 499 U.S. 432 (1991) (attorney who represents himself is not entitled to statutory attorney's fees).

[8] This Court notes that Plaintiff stands in violation of Judge Arleo's order to join the corporate entity in this action. This does not impact this Court's decision, however, because Plaintiff was a party to the previous state action, and therefore is also bound by the outcome determined here.

[9] Since this Court lacks subject matter jurisdiction over the complaint, it lacks the authority to decide any of the pending motions. *Steel Valley Authority v. Union Switch and Signal Div.*, 809 F.2d 1006, 1010 (3d Cir. 1987) ("[T]he lack of subject matter jurisdiction voids any decree entered in a federal court and the continuation of litigation in a federal court without jurisdiction would be futile.").

Magistrate Judge Arleo.[10] On May 20, 2009, Plaintiff filed a "Motion to Hear Pending Motions." (Docket Entry No. 44). On August 10, 2009, Plaintiff renewed his motion seeking the recusal of Magistrate Judge Arleo. (Docket Entry No. 47.)

II. SUBJECT MATTER JURISDICTION

In the motion to dismiss, Defendant argues that this Court lacks subject matter jurisdiction due to Plaintiff's failure to articulate a federal question. This Court agrees that it lacks subject matter jurisdiction, but bases that conclusion on a different principle. That is, this Court concludes that, based on the *Rooker-Feldman* doctrine,[11] subject matter jurisdiction is lacking in this case.

Although neither party raised the applicability of the *Rooker-Feldman* doctrine, this Court has an independent obligation to satisfy itself that it has subject matter jurisdiction. *See* FED. R. CIV. P. 12(h)(3); *Bradgate Assocs., Inc. v. Fellows, Read & Assoc., Inc.*, 999 F.2d 745, 751 (3d Cir. 1993) ("[L]ack of subject matter jurisdiction terminates a case originally filed in federal court because Rule 12(h)(3) instructs the

---

[10] Judge Arleo denied the motion for recusal on July 30, 2009.

[11] The *Rooker-Feldman* doctrine arose from two cases decided by the Supreme Court of the United States – *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923) and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

district court to dismiss cases which do not meet jurisdictional prerequisites."); *Joyce v. United States*, 474 F.2d 215, 219 (3d Cir. 1973) ("Where there is no jurisdiction over the subject matter, there is, as well, no discretion to ignore that lack of jurisdiction.").

The requirement to ensure that subject matter jurisdiction exists does not give this Court limitless authority to act on its own initiative. In fact, the Third Circuit has instructed district courts to allow the parties to address the question of subject matter jurisdiction before sua sponte dismissing a complaint. *Neiderhiser v. Borough of Berwick*, 840 F.2d 213, 216 n.6 (3d Cir. 1988) ("While the district court's consideration of the jurisdictional issue sua sponte was proper, the court did not afford the parties the opportunity to brief or present evidence on this issue. We find this lack of opportunity to be heard to be improper. The court below should have allowed [plaintiff] sufficient time to present evidence or otherwise respond on the issue of jurisdiction before it determined that none existed."). However, this notice requirement is apparently not mandatory since the Third Circuit affirmed the sua sponte dismissal of a case, pursuant to FED. R. CIV. P. 12(h)(3), due to lack of subject matter jurisdiction when the claims asserted were barred by the *Rooker-Feldman* doctrine. *Untracht v. Weimann*, 141 F. App'x 46 (3d Cir. 2005).

Even if this Court were required to provide Plaintiff with an opportunity to comment on the question of subject matter jurisdiction, Plaintiff has

already had that opportunity. Here, Defendant raised the question of subject matter jurisdiction in its motion to dismiss, and Plaintiff had ample opportunity to respond. For example, Plaintiff noted that he had raised a federal claim of discrimination, and then continued with a discussion of the burden-shifting analysis required in addressing a discrimination claim.[12] (Mem. in Support of Pl.'s Notice of Mot. for Order to Show Cause Why the Def.'s Mot. to Dismiss is Improperly Before this Court – Why Pl.'s Discovery is Held in Abeyance – the Court's Failure to Investigate Allegations of Fraud upon the Court and Plaintiff's Mot. for Recusal of the Hon. Madeline Cox [Arleo], U.S.M..J. [hereinafter "Mot. to Show Cause Mem."] ¶ 20.) While Defendant's argument was based on a different legal theory – the failure to articulate a federal question – rather than the *Rooker-Feldman* doctrine upon which this Court relies, the essential facts required to demonstrate subject matter jurisdiction are the same. That is, the insurance policy issued, and then cancelled, by Defendant forms the basis of Plaintiff's current case.

---

[12] Although Plaintiff cites employment discrimination cases in his discussion, a similar burden-shifting analysis is used for all discrimination cases. This Court notes that Defendant's implication that discrimination only exists in the employment context is misplaced. (Def.'s Mem. of Law in Support of Mot. to Dismiss 10.) While Plaintiff was never Defendant's employee, that does not prevent Plaintiff from bringing a claim for discrimination on other grounds.

Plaintiff acknowledges that the propriety of the cancellation was adjudicated previously by the Superior Court, but argues before this Court that that decision was erroneous. Plaintiff further argues that the case pending before this Court raises legal theories that were not brought before the Superior Court, apparently due to the ineffectiveness of Plaintiff's counsel. (Mot. to Show Cause Mem. ¶ 8.) Clearly, Plaintiff not only had notice that subject matter jurisdiction was at issue, but also had the opportunity to respond.

III. *ROOKER-FELDMAN* DOCTRINE

This Court concludes that the case must be dismissed since this Court lacks subject matter jurisdiction over the complaint, pursuant to the *Rooker-Feldman* doctrine. *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923). "The *Rooker-Feldman* doctrine deprives a federal district court of jurisdiction in some circumstances to review a state court adjudication." *Turner v. Crawford Square Apartments III, L.P.*, 449 F.3d 542, 547 (3d Cir. 2006). Generally, "'[u]nder the *Rooker-Feldman* doctrine, lower federal courts cannot entertain constitutional claims that have been previously adjudicated in state court or that are inextricably intertwined with a state adjudication.'" *Whiteford v. Reed*, 155 F.3d 671, 673-74 (3d Cir. 1998) (quoting *Gulla v. N. Strabane Twp.*, 146 F.3d 168, 170 (3d Cir. 1998)). The *Rooker-Feldman* doctrine thus "'precludes a federal action if the relief

requested in the federal action would effectively reverse the state decision or void its ruling.'" *Id.* (quoting *FOCUS v. Allegheny County Ct. of Common Pleas*, 75 F.3d 834, 840 (3d Cir. 1996)).

In *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005), the Supreme Court of the United States clarified the scope of *Rooker-Feldman*, making clear that the doctrine deprives a district court of subject matter jurisdiction only in "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."

In his hundreds of pages of submissions, Plaintiff, on one occasion, states that "[t]he attorneys for the Defendants seem to believe that the current lawsuit is a thinly veiled attempt to have this Court revisit a previously litigated and decided issue. **Nothing could be further from the truth.**" (Cert. in Support of Mot. for Sanctions 3 (emphasis in original).) This single assertion notwithstanding, the basis of Plaintiff's complaint is his dissatisfaction with the outcome of his case in the Superior Court. Every allegation in the complaint revolves around Plaintiff's belief that the insurance policy was wrongly cancelled, and that Defendant acted improperly. The Superior Court has already concluded that Defendant "was entitled to cancel the insurance policy [because] [P]laintiff failed to disclose, at the time of renewing the last application, that a large portion of its

business with – was with schools or school age passengers. [Disclosure of this fact] created a sub – substantial and material change in the risk assumed, which could not have been reasonably contemplated by the parties at the time of the assumption of risk. In addition, [D]efendant followed the statutory and regulatory provisions for cancelling the insurance policy." (Ex. I at 11:20-12:8.) This decision resolves all of Plaintiff's current claims arising from cancellation of the insurance contract.

The only claim that is not directly addressed by the Superior Court's decision is Plaintiff's claim of discrimination. Even Plaintiff's allegations of discrimination would require this Court to overturn the decision of the Superior Court.[13] That is, in order for Plaintiff to prevail on his discrimination claims, Plaintiff would have to allege a prima facie case of discrimination. *See, e.g., Makky v. Chertoff*, 541 F.3d 205, 214 (3d Cir. 2008). Plaintiff does allege that Defendant treated his minority-owned business differently from businesses owned by Caucasians.[14]

---

[13] Since this Court lacks subject matter jurisdiction over the case, this Court does not reach the merits of Plaintiff's discrimination claims. However, this Court must consider the *McDonnell-Douglas* burden-shifting paradigm in order to analyze the question of subject matter jurisdiction.

[14] Plaintiff argues that he requires extensive discovery in order to gather evidence in support of his claim of discrimination. (*See, e.g.*, Mot. to Show Cause Mem. ¶¶ 21-24.) Even if Plaintiff were to uncover evidence of disparate treatment, this Court lacks authority to overturn the decision of the Superior Court that concluded Defendant was entitled to cancel the

(Continued on following page)

Defendant would then need to offer a legitimate non-discriminatory business reason for its cancellation of the policy. Defendant has already presented its legitimate business reason to the Superior Court. Therefore, in order to rule in Plaintiff's favor, this Court would have to conclude that the Superior Court erred when it decided the insurance policy was cancelled due to Plaintiff's material misrepresentation. Since the *Rooker-Feldman* doctrine "'precludes a federal action if the relief requested in the federal action would effectively reverse the state decision or void its ruling,'" *Whiteford*, 155 F.3d at 673-74 (quoting *FOCUS*, 75 F.3d at 840), that doctrine divests this Court of subject matter jurisdiction over Plaintiff's complaint.

---

insurance policy. Only an appellate court of the state of New Jersey has jurisdictional authority to review the decision of the Superior Court. *See Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 644 n.3 (2002) ("The *Rooker-Feldman* doctrine merely recognizes that 28 U.S.C. § 1331 is a grant of original jurisdiction, and does not authorize district courts to exercise appellate jurisdiction over state-court judgments, which Congress has reserved to this Court, *see* [28 U.S.C.] § 1257(a).")

IV. CONCLUSION

This Court lacks subject matter jurisdiction over the complaint due to the *Rooker-Feldman* doctrine. The complaint must be dismissed, with prejudice.

S/ Joseph A. Greenaway, Jr.
JOSEPH A. GREENAWAY, JR.,
U.S.D.J.

Date: September 24, 2009

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CURTIS A. DUKES., ET ALS, Plaintiff, v. LANCER INSURANCE CO., ET ALS, Defendant.	Civil Action No. 08-4948 (JAG) **ORDER CLOSED** (Filed Sep. 24, 2009)

GREENAWAY, JR., U.S.D.J.

This matter comes before this Court on (1) the motion (Docket Entry No. 31) filed by defendant, Lancer Insurance Co. ("Defendant"), to dismiss plaintiff Curtis A. Dukes's (Plaintiff) amended complaint; (2) the motion (Docket Entry No. 18) for sanctions filed by Plaintiff; (3) the motion (Docket Entry 35) for an order to show cause filed by Plaintiff; and (4) the motion (Docket Entry No. 44) to hear pending motions filed by Plaintiff. For the reasons set forth in the accompanying Opinion,

IT IS, on this 24th day of September, 2009,

ORDERED that the complaint is DISMISSED for lack of subject matter jurisdiction; and it is further

ORDERED that a copy of this Order be served on all parties within seven (7) days of the date of entry of this Order.

S/ Joseph A. Greenaway, Jr.
JOSEPH A. GREENAWAY, JR.,
U.S.D.J.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-1022

CURTIS DUKES,

Appellant

v.

LANCER INSURANCE CO.

PETITION FOR PANEL REHEARING

(Filed Aug. 20, 2010)

PRESENT: SMITH, FISHER, and GARTH,
Circuit Judges

The Motion by the Appellant Curtis Dukes to have the Petition for Rehearing which was filed on August 13, 2010, be Stricken from the Record and a Corrected Copy Be Filed, be and is hereby granted.

The Corrected Petition for Panel Rehearing filed by the Appellant in the above entitled matter, having been submitted to the judges who participated in the decision of this Court, and no judge who concurred in the decision having asked for rehearing by this panel, the Corrected Petition for Panel Rehearing is DENIED.

BY THE COURT,

/s/ Leonard I. Garth
LEONARD I. GARTH

Dated: August 20, 2010

trg/cc: Curtis A. Dukes
Brian M. Thorn, Esq.

RECEIVED AND FILED
SUPERIOR COURT
UNION COUNTY
Criminal Case – Management Office

JUN 25 2007

BERNADETTE A. FIORE, PhD.
Criminal Division Manager

PG#05004018-001-UNION COUNTY

State of New Jersey **v.** Defendant: **BRIAN BARTIROMO** (Specify Complete Name)	
DATE OF BIRTH [Date Of Birth Omitted]	SBI NUMBER 847104B
DATE OF ARREST 09/23/05	DATE INDICTMENT/ ACCUSATION FILED 09/23/05
DATE OF ORIGINAL PLEA 05/08/07	ORIGINAL PLEA ☐ Not Guilty ☒ Guilty

[SEAL] **New Jersey Superior Court**
Law Division – Criminal
CountyName County

☒ JUDGMENT OF CONVICTION

☐ CHANGE OF JUDGMENT

☐ ORDER FOR COMMITMENT

☐ INDICTMENT/ACCUSATION DISMISSED

☐ JUDGMENT OF ACQUITTAL

ADJUDICATION BY	
☒ GUILTY PLEA	DATE: 05/08/07
☐ NON-JURY TRIAL	DATE:
☐ JURY TRIAL	DATE:
☐ DISMISSED/ACQUITTED	DATE:

ORIGINAL CHARGES

IND/ACC NO.	COUNT	DESCRIPTION	DEGREE	STATUTE
05-09-01233-A	2	OFFENSIVE TOUCHING (AS AMENDED)	PDP	2C:33-4B
	4	OFFENSIVE TOUCHING (AS AMENDED)	PDP	2C:33-4B

FINAL CHARGES

COUNT	DESCRIPTION	DEGREE	STATUTE
2	OFFENSIVE TOUCHING (AS AMENDED)	PDP	2C:33-4B
4	OFFENSIVE TOUCHING (AS AMENDED)	PDP	2C:33-4B

It is, therefore, on 06/15/07 ORDERED and ADJUDGED that the defendant is sentenced as follows:

COUNT 2

– Defendant is placed on probation for a period of 3 YEAR(S). In addition to the standard conditions of probation, the Defendant shall comply with the following conditions of probation:

1. The Defendant shall perform 80 HOUR(S) of community service.

2. The Defendant shall forfeit public office in State of New Jersey, including but not limited to resignation from police department.

COUNT 4

– Defendant is place [sic] on probation for a period of 3 YEAR(S). In addition to the standard conditions of probation, the Defendant hsall [sic] comply with the following conditions of probation:

1. The Defendant shall forfeit public office in State of New Jersey, including but not limited to resignation from police department.

Counts 2 and 4 run concurrent to each other.

Counts 1 and 3 of 05-09-01233-A are dismissed.

☐ The defendant is hereby sentenced to community supervision for life.

☐ The defendant is hereby ordered to serve a ___ year term of parole supervision which term shall begin as soon as defendant completes the sentence of incarceration.

☐ The court finds that the defendant's conduct was characterized by a pattern of repetitive and compulsive behavior.

☐ The court finds that the defendant is amenable to sex offender treatment.

☐ The court finds that the defendant is willing to participate in sex offender treatment.

☒ The defendant is hereby ordered to provide a DNA sample and ordered to pay the costs for testing of the sample provided.

☐ It is further ORDERED that the sheriff deliver the defendant to the appropriate correctional authority.

☒ Defendant is to receive credit for time spent in custody (R. 3:21-8)	TOTAL NUMBER OF DAYS 0	DATE: (From/To) DATE: (From/To)
☐ Defendant is to receive gap time credit for time spent in custody (N.J.S.A. 2C:44-5b(2)).	TOTAL NUMBER OF DAYS	DATE. (From/To) DATE: (From/To)

Total Custodian Term _____ Institution _____ Total Probation Term 3 YEARS

Total Fine $ _____

Total RESTITUTION $ _____

If the offense occurred on or after December 23, 1991, an assessment of $50 is imposed on each count on which the defendant was convicted unless the box below indicates a higher assessment pursuant to N.J.S.A. 2C:43-3.1. (Assessment is $30 if offense is on or after January 9, 1986 but before December 23, 1991, unless a higher penalty is noted. Assessment is $25 if offense is before January 9, 1986.)

☒ Assessment Imposed on
count(s) 2 & 4
is $50.00 each.

Total VCCB Assessment $100.00

Installment payments are due at the rate of

$ _____ per _____

beginning _____

(Date)

If any of the offenses occurred on or after July 9, 1987, and is for a violation of Chapter 35 or 36 of Title 2C,

1) A mandatory Drug Enforcement and Demand Reduction (D.E.D.R,) penalty is Imposed for each count. (Write in # times for each.)

___ 1st Degree @ $3000
___ 2nd Degree @ $2000
___ 3rd Degree @ $1000
___ 4th Degree @ $750
___ Disorderly Persons or Petty Disorderly Persons @ $500

Total D.E.D.R. Penalty $____

☐ Court further Orders that collection of the D.E.D.R. penalty be suspended upon defendant's entry into a residential drug program for the term of the program.

2) A forensic laboratory fee of $50 per offense is ORDERED. ____ Offenses @ $50.

Total Lab Fee $ ____

3) Name of Drugs involved ____

4) A mandatory driver's license suspension of ____ months is ORDERED.

The suspension shall begin today, ___ and end ____.

Driver's License Number _____

(IF THE COURT IS UNABLE TO COLLECT THE LICENSE, PLEASE ALSO COMPLETE THE FOLLOWING)

Defendant's Address _____

Eye Color ___ Sex ___ Date of Birth 09/15/73

☐ The defendant is the holder of an out-of-state driver's license from the following jurisdiction ____. Driver's License Number ____

☐ Defendant's non-resident driving privileges are hereby revoked for ___ months

It the offence occurred on or after February 1, 1993 but was before March 13, 1995 and the sentence is to probation or to a state correctional facility, a transaction fee of up $1.00 is ordered for each occasion when a payment or installment payment is made. (P.L. 1992, c. 169). If the offense occurred on or after March 13, 1995 and the sentence is to probation, or the sentence otherwise requires payments of financial obligations to the probation division, a transaction fee of up to $2.00 is ordered for each occasion when a payment is made. (P.L. 1995, c. 9). $2.00

If the offense occurred on or after August 2, 1993, a $75 Safe Neighborhood Services Fund assessment is ordered for each conviction.

(P.L.1993, c. 220) $150.00.

If the offense occurred on or after January 5, 1994 and the sentence is to probation, a fee of up to $25 per month for the probationary term is ordered. (P.L. 1993, c. 276) Amount per month $5.00.

If the crime occurred on or after January 9, 1997, a $30 Law Enforcement Officers Training and Equipment Fund penalty is ordered. $30.00
It the crime occurred on or after May 4, 2001, and the defendant has been convicted of aggravated sexual assault, aggravated criminal sexual contact, kidnapping under 2C:13-1c(2), endanger the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of a minor under 2C:24-4a, endangering the welfare of a child pursuant to 2C:24-4b(4), luring or enticing a child pursuant to 2C:13-6, criminal sexual contact pursuant to 2C:14-3b if the victim is a minor, kidnapping pursuant to 2C:13-1, criminal restraint pursuant to 2C:13-2 or false imprisonment pursuant to 2C:13-3. If the victim is a minor and the offender is not the parent, promoting child prostitution pursuant to 2C:34-1b(3) or (4), or an attempt to commit any of these crimes, a $800 Statewide Sexual Assault Nurse Examiner Program Penalty is ordered for each of these offenses.

Name (Court Clerk or Person preparing this form)	Telephone Number	Name (Attorney for Defendant at Sentencing)
/lam	908-659-4133	Craig Swenson, Esq.

STATEMENT OF REASONS – Include all applicable aggravating and mitigating factors

The Court finds that aggravating factors 3 and 9 and mitigating factors 7 and 10 are present here based upon the following facts: Defendant pleaded guilty to two acts of offensive touching related to two different women on occasions more than one year apart, The aggravating factors are equal to the mitigating factors.		
Judge (Name)	Judge (Signature)	Date
MARIANNE ESPINOSA, J.S.C.	/s/ Marianne Espinosa	06/15/07

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 1/14/2009
PRODUCER (201) 661-2000 FAX: (201) 661-2499 Capacity Coverage Co. One International Blvd. 3rd Floor Mahwah NJ 07495	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED Long Valley Coach LLC 110-1 Route 46 Bud Lake NJ 07828	INSURER A: Lancer Insurance Company	
	INSURER B:	
	INSURER C:	
	INSURER D: REVISED	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

N5R LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE X OCCUR	GL157235 #1	1/14/2009	1/14/2010	EACH OCCURRENCE	$ 2,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
						MED EXP (Any one person)	$ 5,000

		GENERAL AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PROJECT [ ] LOC				PERSONAL & ADV INJURY	$ 2,000,000
						GENERAL AGGREGATE	$ 2,000,000
						PRODUCTS – COMP/OP AGG	$ NOT COVERED
A		AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] ALL AUTOS OWNED [X] SCHEDULED AUTOS [X] HIRED AUTOS [X] NON-OWNED AUTOS [ ] _____	BA162437 #1	1/14/2009	1/14/2010	COMBINED SINGLE LIMIT (Ea accident)	$ 5,000,000
						BODILY INJURY (Per person)	$
						BODILY INJURY (Per accident)	$
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY [ ] ANY AUTO				AUTO ONLY – EA ACCIDENT	$
						OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS/UMBRELLA LIABILITY [ ] OCCUR [ ] CLAIMS MADE [ ] DEDUCTIBLE [ ] RETENTION $				EACH OCCURRENCE	$
						AGGREGATE	$
							$
							$
							$

	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS	OTHER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT		$
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE – EA EMPLOYEE		$
					E.L. DISEASE – POLICY LIMIT		$
	OTHER						

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

CERTIFICATE HOLDER IS ALSO NAMED AS ADDITIONAL INSURED BUT ONLY TO THE EXTENT THAT THE CERTIFICATE HOLDER IS ALSO LIABLE FOR THE CONDUCT OF THE NAMED INSURED.

CERTIFICATE HOLDER

(973) 361-2405 908-269-8014

RANDOLPH TWP BOARD OF EDUCATION
25 SCHOOL HOUSE RD
RANDOLPH, NJ 07869

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

/s/ Robert V. Clarice

FMCSA Motor Carrier [LOGO]

USDOT Number: **1716673**
Docket Number: **MC629598**
Legal Name: **LONG VALLEY COACH, L.L.C.**

DBA (Doing-Business-As) Name

Addresses

Business Address: **195 PLEASANT GROVE RD**
LONG VALLEY, NJ 07853
Business Phone: **(800) 269-4925**
Business Fax: **Fax: (908) 269-8014**

Mail Address: **195 PLEASANT GROVE RD**
LONG VALLEY, NJ 07853

Mail Phone: Mail Fax: Undeliverable Mail: **NO**

Authorities:

Common Authority: **ACTIVE**
Contract Authority: **NONE**
Broker Authority: **NONE**
Property: **NO**
Private: **NO**
Application Pending: **NO**
Application Pending: **NO**
Application Pending: **NO**
Passenger: **YES**
Enterprise: **NO**
Household Goods: **NO**

Insurance Requirements:

BIPD Exempt: **NO**
Cargo Exempt: **NO**
BOC-3: **YES**
Blanket Company: **ALL AMERICAN AGENTS OF PROCESS**

BIPD Waiver: **NO**
BIPD Required: **$5,000,000**
Cargo Required **NO**
Bond Required: **NO**
BIPD on File: **$5,000,000**
Cargo on File: **NO**
Bond on File: **NO**

Comments: **2-5-08 NAME CHANGE ASSIGNED TO TARA.**

Active/Pending Insurance:

Form: **91X** Type: **BIPD/Primary**
Posted Date: 01/14/2009
Policy/Surety Number: **BA162437**
Coverage From: **$0** To: **$5,000,000**
Effective Date: **01/14/2009** Cancellation Date:

Insurance Carrier: LANCER INSURANCE COMPANY
Attn: DEANNA GRASS
Address: 111 CORNING ROAD STE. 180
CARY, NC 27518 US
Telephone: (877) 526-2377 Fax: (919) 858-0932

Rejected Insurances:

Form: Type:
Policy/Surety Number: Coverage From: **$0**
To: **$0**
Received: Rejected:
Rejected Reason:

* * *

Run Date: November 3, 2010
Run Time: 12:56

[LOGO] ***Passaic Valley Coach Lines***
Charter and Tour Service

[08-4948]

October 05, 2009

RECEIVED
OCT 08 2009
Joseph A. Greenaway, Jr.
United States District Judge

To Whom It May Concern
United States District Court of New Jersey
Attention: Judge Joseph A. Greenaway, Jr.

Re: Employee Qualification With Lancer Insurance

Mr. Curtis Dukes as [sic] been employed at Passaic Valley Coaches as a Motorcoach Operator, also known as a bus driver, since July 19, 1996. As of October 5, 2009 Mr. Dukes is still currently employed by Passaic Valley Coaches.

Mr. Dukes is covered under the Passaic Valley Coach insurance policy with Lancer Insurance: Mr. Dukes has been covered by said insurance policy since his hire date in 1996. The annual application for insurance lists the names and drivers license numbers of all employees, including Mr. Dukes' name. All employees, including Mr. Dukes, are vetted annually by Lancer.

/s/ Wayne C. Braunwarth
Wayne C. Braunwarth,
President, Passaic Valley
Coaches 5, October 2009

ROBERT B. WINDHORST
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES NOV. 23, 2013

/s/ Robert B. Windhorst

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 03/28/2005
PRODUCER (201) 661-2000 FAX: (201) 661-2499 Capacity Coverage Company of NJ Inc One International Blvd. 3rd Floor Mahwah, NJ 07495	**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**	
	INSURERS AFFORDING COVERAGE	**NAIC #**
INSURED Dukes Coach Lines, Inc. 88 Sherman Place Irvington, NJ 07111	INSURER A: Lancer Insurance Company	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

N5R LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☐ OCCUR ☐ _____ ☐ _____				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
						MED EXP (Any one person)	$

		GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC				PERSONAL & ADV INJURY	$
						GENERAL AGGREGATE	$
						PRODUCTS – COMP/OP AGG	$
A		**AUTOMOBILE LIABILITY** ☐ ANY AUTO ☐ ALL OWNED AUTOS X SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS ☐ _____	BA158489 #2	03/27/2005	03/27/2006	COMBINED SINGLE LIMIT (Ea accident)	$ 5,000,000
						BODILY INJURY (Per person)	$
						BODILY INJURY (Per accident)	$
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY – EA ACCIDENT	$
						OTHER THAN EA ACC	$
						AUTO ONLY: AGG	$
		EXCESS/UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE ☐ DEDUCTIBLE ☐ RETENTION $				EACH OCCURRENCE	$
						AGGREGATE	$
							$
							$
							$

	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS / OTHER	
					E.L. EACH ACCIDENT	$
					E.L. DISEASE – EA EMPLOYEE	$
					E.L. DISEASE – POLICY LIMIT	$
	OTHER					

DESCRIPTION OF OPERATION/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

CERTIFICATE HOLDER IS ALSO NAMED AS ADDITIONAL INSURED BUT ONLY TO THE EXTENT THAT THE CERTIFICATE HOLDER IS ALSO LIABLE FOR THE CONDUCT OF THE NAMED INSURED.

CERTIFICATE HOLDER	CANCELLATION
Hunterdon County Educational Service Comm. – Adult Education Sand Hills Center – Yellow House 215 Route 31 Flemington, NJ 08822	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OR ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE /s/ [Illegilbe]

CAPACITY COVERAGE COMPANY
OF NEW JERSEY, INC.

Insurance Resource Group, Inc.

Insurance and Financial Services

One International Blvd. • Mahwah, NJ 07495
Telephone 201-661-2000 • Fax 201-236-0480
Internet: www.capcoverage.com

December 19, 2005

Curtis Dukes
Dukes Charter Service
1253 Springfield Avenue, Suite 301
New Providence, NJ 07974

Re: Policy Cancellation

Dear Curtis:

This will confirm our conversation. As we discussed, during the course of our efforts to get Lancer to reconsider their cancellation we spoke to your underwriter with regard to the possibility of reinstating your policy if you were excluded as a driver. They were already aware that you were a full time driver for another Lancer insured, Passaic Valley.

After consideration they advised our office that they could not comply with our request. Their reasoning was the large amount of school work that Dukes performed (60%) and that it would be impossible to verify that you wouldn't be driving.

I trust this clarifies the situation. Please let me know if you require any additional information.

Sincerely,

/s/ Robert B. Chernin
Robert B. Chernin
Vice President

RBC/cc

Donna Furnish

From: Donna Furnish
Sent: Tuesday, September 27, 2005 2:56 PM ✓
To: 'Robert B. Chernin'
Subject: Dukes Coach Lines

Per Pat Delaney: Lancer is issuing notice of cancellation on this account because of the restriction on Curtis' license that states "Other: No School Age Passengers".

The explanation Curtis provided does not satisfy the carrier especially with loss control reporting 60% of their work is "School work" before and after school activities.

Donna Furnish
Account Executive
Capacity Coverage Co. of NJ Inc.
Direct: (201) 661-2442
Direct Fax: (201) 661-7789

[LOGO]
New Jersey
Motor Vehicle Commission

P.O. Box 160
Trenton, New Jersey
08666-0160

STATE OF NEW JERSEY
On the Road to Excellence
Visit us at www.njmvc.gov
New Jersey Is An Equal Opportunity Employer

Jon S. Corzine
Governor

Sharon A. Harrington
Chief Administrator

March 14, 2008

Curtis A. Dukes, Charter Manager
Dukes Coach Lines, Inc
1253 Springfield Avenue
Suite 301
New Providence, NJ 07974

Dear Mr. Dukes:

Your recent correspondence to our Chief Administrator Sharon Harrington was forwarded to my office for a response. As we discussed on the telephone on Wednesday, March 13th, you are requesting information from the Motor Vehicle Commission regarding two of your drivers, if they are licensed to transport school children.

Our records indicate that both drivers that you have employed Mr. Richard Rivers and Mr. Richard Mack have the valid license with the "S" school bus endorsement and "P" Passenger endorsement that is required to transport school children.

Your company Dukes Coach Lines bus cannot transport children to and from school or school

related activities or camp. If they were school buses they would need to be inspected and licensed as a school bus with an S1 or S 2 plate. However, these buses can transport school children with chaperones to a special day trip activity away from the school, such as a museum or a zoo when a larger bus is needed. The drivers must be licensed with a CDL Class B, with a passenger and school bus endorsement.

Our records reflect that the bus that you mentioned in your correspondence has not been operating in the past few years. When you are ready to put the bus back on the road a new US DOT number must be issued.

I hope this answers your questions. If I can be of further service do not hesitate to contact my office at (609) 292-8607.

Sincerely,

/s/ Kathy Higham
Kathy Higham, Manager
Driver Review

C Vince Schulze
Denise Mattei

CAPACITY COVERAGE COMPANY OF NEW JERSEY, INC.

Insurance Resource Group, Inc.

Insurance and Financial Services

November 7, 2005

Curtis Dukes
Dukes Charter Service
1253 Springfield Ave, Suite 301
New Providence, NJ 07974

Re: Insurance Coverage

Dear Curtis:

This will confirm our various conversations over the past few weeks. We have been unsuccessful in obtaining insurance quotes for you in NJ. There are a limited number of markets and all have declined to quote based on Lancer's cancellation notice.

I apologize that we were not able to get quotes for you. Also, it is my understanding that you are looking into opening a company in North Carolina. Unfortunately I am not licensed in North Carolina so we will not be able to help you get insurance there either. Hopefully the other agent I referred you to will be able to help.

Curtis, I am truly sorry we cannot do more to help you. I feel your current situation is unjust, to say the least. Please feel free to reach out for me if there is anything else we can do to help.

Best Regards

Sincerely,

/s/ Robert B Chernin
Robert B. Chernin
Vice President

RBC/cc

One International Blvd. • Mahwah, NJ 07495
Telephone 201-661-2000 • Fax 201-236-0480
Internet: www.capcoverage.com

LANCER
INSURANCE
The Difference is Our Attitude.

October 25, 2005

Passaic Valley Coach Lines
T/A Passaic Valley Coaches
71 River Road
Chatham, New Jersey 07928-1930

Attention: Wayne Braunwarth

Dear Mr. Braunwarth:

We recently received a copy of a letter from the New Jersey Motor Vehicle Commission to Curtis A. Dukes, a driver employed by your company, dated October 5, 2005. According to this letter, Mr. Dukes is permitted to operate charter vehicles, however, Mr. Dukes is not permitted to operate any vehicle utilized for a school related function.

We request that you acknowledge below that you will not allow Mr. Dukes to drive any vehicle used for the transportation of school age children arising out of a school related function. Please acknowledge your agreement below and forward this letter to my attention at the above-referenced address.

Thank you for your attention and cooperation with respect to this matter.

Very truly yours,

/s/ Eileen A. FitzGerald
Eileen A. FitzGerald
Assistant Vice President
Associate General Counsel

EAF/nl

Wayne Braunwarth
Owner
Passaic Valley Coach Lines.